

(23,249)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 674.

MITCHELL COAL AND COKE COMPANY, PLAINTIFF IN
ERROR,

vs.

PENNSYLVANIA RAILROAD COMPANY.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF PENNSYLVANIA.

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APRIL SESSION, 1905.

George S. Graham Mitchell Coal and Coke Company

4

vs.

John G. Johnson The Pennsylvania Railroad
Company.

1905 March 14 Praeceptum for summons filed.
Summons exit returnable first
Monday of April next.

" April 3 Summons returned served.

4 John G. Johnson, Esq., appears
for defendant.

“ November 20 Statement of Claim filed.
Rule to plead filed.

“ December 5 Plca filed.

1906 March	31	Petition and order granting rule on defendant to show cause why it should not produce certain books, etc., etc.
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" April 7. Answer of defendant to petition
for production of books filed.
Argued.

“ “ 12 Order directing defendant to produce certain books, etc.

“ “ 14 Exceptions to order to produce books, etc., filed.

Assignments of error filed.

Petition and order allowing writ
of error.

Writ of error allowed and copy thereof lodged in Clerk's office for adverse party.

Docket Entries.

- Citation allowed and issued.
 Citation returned service accepted.
 Bond sur writ of error approved and filed.
- “ “ 20 Plea filed.
 Plea filed.
- “ May 8 Record sur writ of error transmitted to U. S. C. C. of Appeals.
- 1907 March 11 Mandate received from United States Circuit Court of Appeals wherein it is ordered that the judgment of this court be and the same is hereby reversed with costs.
- “ “ 22 Petition on behalf of plaintiff and order granting rule to show cause why plaintiff should not have leave to take the depositions of John Lloyd and Thomas E. Mickel, returnable March 27th, 10 o'clock a. m.
- “ “ 27 Answer of defendant to rule to show cause why plaintiff should not have leave to take certain depositions.
- “ April 17 Argued. *Eo die*. Rule absolute.
 Petition, affidavit and order of court granting rule on defendant to show cause why the statement of claim should not be amended, returnable April 22, 1907.
- “ “ 18 Replication filed.
- “ “ 26 Agreement and order of reference filed.

- “ June 29 Petition and affidavit for rule to amend statement of claim and decree granting rule on defendant to show cause why statement of claim should not be amended. Returnable July 1, 1907, at 10 o'clock.
- “ July 1 Answer of defendant to petition for leave to amend statement of claim.
Order of court referring petition to amend to Referee.
- 1910 May 2 Affidavit in support of motion for rule to amend Statement of Claim filed.
Order granting rule on defendant to show cause why Statement of Claim should not be amended. Returnable May 7, 1910, at 10 a. m.
- “ “ 13 Answer of defendant to petition of plaintiff for leave to amend filed.
- “ June 2 Stipulations filed by Referee.
Testimony taken before Referee filed.
Requests for findings of fact and conclusions of law filed on behalf of plaintiff.
Additional requests for findings of facts and conclusions of law on behalf of plaintiff filed.
Findings of fact submitted upon behalf of defendant filed.
Findings of law submitted upon behalf of defendant filed.
Request for allowance of counsel fee to plaintiff filed.

Docket Entries.

- Report of Referee filed.
 Exceptions of defendant to report of Referee filed.
 Report of Referee on exceptions filed.
- “ “ 27 Argued sur exceptions to Referee’s report and sur motion to amend statement.
- “ September 9 Opinion, McPherson, J., sur exceptions to Referee’s report, &c., filed.
- “ November 26 Motion to dismiss for want of jurisdiction filed.
- “ December 19 Argued.
- 1911 January 4 Opinion, McPherson, J., dismissing suit for want of jurisdiction filed.
- “ “ 6 Allowance of exception to plaintiff filed.
- “ March 10 Praecipe for judgment filed.
 Judgment accordingly.
 Bill of exceptions filed.
 Certificate of question of jurisdiction filed.
 Assignments of error filed.
 Petition for writ of error to Supreme Court of U. S. filed.
 Order allowing petition for writ of error filed.
- “ “ 11 Bond sur writ of error filed.
 Order approving bond sur writ of error filed.
- “ “ 15 Writ of error allowed and copy thereof lodged in Clerk’s office for adverse party.
 Citation allowed and issued.
- “ “ 17 Citation returned “service accepted” and filed.

Writ of Error.

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|------|--------|----|--|
| " | " | 23 | Stipulation sur transmission of appeal filed. |
| " | " | 25 | Praeipe for transcript of record sur writ of error filed. |
| " | July | 11 | Petition for writ of error to U. S. Court of Appeals filed.
Order allowing petition for writ of error filed. |
| " | " | 14 | Assignments of error filed.
Bond sur writ of error in the sum of \$500.00 filed.
Order approving bond sur writ of error filed.
Writ of error allowed and copy thereof lodged in Clerk's office for adverse party.
Citation allowed and issued.
Citation returned "service accepted" and filed.
Praeipe for transcript of record sur writ of error field. |
| 1911 | August | 11 | Transcript of record sur writ of error transmitted to Clerk of U. S. C. C. of Appeals. |
| 1912 | April | 3 | Mandate received from U. S. C. C. of Appeals ordering that the writ of error in this cause be dismissed with costs and filed. |
| " | " | 6 | Assignments of error filed. |
| " | " | " | Petition of Mitchell Coal and Coke Company for writ of error to U. S. Supreme Court filed.
Order allowing petition for writ of error filed. |
| " | " | 9 | Praeipe for transcript of record sur writ of error to U. S. Supreme Court filed.
Bond sur writ of error in sum of \$500. filed.
Order approving Bond sur writ of error filed. |
| " | " | 16 | Writ of error to U. S. Supreme Court allowed and copy thereof lodged in Clerk's office for adverse party.
Citation allowed and issued. |
| " | " | 20 | Citation returned "service accepted" and filed. |
| " | " | 26 | Stipulation to extend time for preparing transcript of record sur writ of error filed. |

UNITED STATES OF AMERICA, ss.

THE PRESIDENT OF THE UNITED STATES,

*To the Honorable the Judge of the Circuit Court of
the United States for the Eastern District of
Pennsylvania,*

Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between Mitchell Coal and Coke Company, plaintiff, and Pennsylvania Railroad Company, defendant, a manifest error hath happened, to the great damage of the said

Mitchell Coal and Coke Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Third Circuit, together with this writ, so that you have the same at the City of Philadelphia within thirty days, in the said United States Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief
Justice of the Supreme Court of the United
(SEAL) States, at Philadelphia, the 14th day of
July, in the year of our Lord one thousand
nine hundred and eleven.

GEORGE BRODBECK,
*Deputy Clerk of the Circuit Court
of the United States.*

Before McPHERSON, J.

Allowed—

BY THE COURT.

Attest—

GEORGE BRODBECK,
Deputy Clerk.

UNITED STATES OF AMERICA, ss.

THE PRESIDENT OF THE UNITED STATES,

To The Pennsylvania Railroad Company,

Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Third Circuit, to be holden at the City of Philadelphia within thirty days, pursuant to a writ of error filed in the Clerk's Office of the Circuit Court of the United States, Eastern District of Pennsylvania, wherein Mitchell Coal and Coke Company is Plaintiff in Error and you are Defendant in Error, to show cause, if any there be, why the judgment rendered against the said Plaintiff in Error in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John B. McPherson, Judge, holding Circuit Court of the United States this 14th day of July, in the year of our Lord one thousand nine hundred and eleven.

BY THE COURT.

Attest:

GEORGE BRODBECK,
Deputy Clerk.

Service accepted.

JOHN G. JOHNSON,
Attorney for defendant in error.

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

No. 4. April Term, 1905.

MITCHELL COAL AND COKE COMPANY.

Plaintiff,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,

Defendant.

PLAINTIFF'S STATEMENT OF CLAIM.

Filed Nov. 20, 1905.

The plaintiff, the Mitchell Coal and Coke Company, a corporation organized and existing under the laws of the State of Pennsylvania, claims of the defendant, The Pennsylvania Railroad Company, a corporation organized and existing under the laws of the State of Pennsylvania, the sum of Ninety-five thousand eight hundred and ninety-four and 23-100 Dollars, upon the cause of action whereof the following is a statement:

That the plaintiff at the time of the committing of the grievances hereinafter mentioned was the owner of large bodies of bituminous coal lands in the Counties of Cambria and Blair, State of Pennsylvania, and at the time hereinafter mentioned was engaged in the business of mining, producing, selling and shipping coal and coke thereon and therefrom.

That The Pennsylvania Railroad Company is a

corporation of the State of Pennsylvania, having its principal office in the City of Philadelphia in said State and is a common carrier engaged in the transportation of passengers and property both wholly by railroad, and partly railroad and partly by water under a common control, management or arrangement for a continuous carriage or shipment from within the State of Pennsylvania to other States of the United States and to foreign countries, and is subject to the provisions of the Act of Congress of February 4, 1887, entitled "An Act to regulate Commerce", and the various amendments thereto; that said defendant, among its branches or divisions, controls and operates what is known as the Cambria & Clearfield Division.

That the plaintiff was the owner of the following bituminous coal producing properties during the following periods, viz:

- (a) Gallitzin Colliery, April 1, 1897, to May 1, 1901.
- (b) Columbia Colliery No. 4, April 1, 1897, to May 1, 1901.
- (c) Columbia Colliery No. 7, July 20, 1899, to May 1, 1901.
- (d) Bennington Colliery, October 30, 1899, to May 1, 1901.

All of which collieries are situated near the defendant's main line of railroad west of Altoona, State of Pennsylvania.

- (e) Hasting's Colliery was owned and operated by plaintiff between April 1, 1897, and May 1, 1901. The said colliery is situated in Cambria County, west of Altoona, State of Pennsylvania, on the line of the Cambria & Clearfield Railroad Company, which is a branch road of the Pennsylvania Railroad Company, defendant, and is owned and controlled by the defendant.

- (f) Columbia Colliery No. 6 was owned and operated by plaintiff between December 8, 1898, and May 1, 1901. The said colliery is situated in Cambria County west of Altoona on the line of the Cambria & Clearfield Railroad Company, which is a branch road of the Pennsylvania Railroad Company, defendant, and is owned and controlled by defendant.

That in the same vicinity are collieries then and ever since owned by the Altoona Coal and Coke Company, Glen White Coal and Lumber Company, Millwood Coal Company, Latrobe Coal and Coke Company, The Bolivar Coal and Coke Company and other colliery companies.

That during the period of the ownership of its said collieries by the said plaintiff, the said Altoona Coal and Coke Company and the Glen White Coal and Lumber Company each owned a short line railroad leading from their collieries to the defendant's railroad or its branches, as well as a small locomotive which hauled the empty railroad cars from the junction of the said short lines with defendant's railroad or its branches, to the said collieries, and after said cars were loaded at said collieries, hauled them back to the said junction, where the defendant Railroad Company took the said cars to their points of destination.

The Millwood Coal Company has no short line railroad, but has a continuation of the mine tracks down to the defendant's railroad or its branches, and with its own small locomotive hauls its cars, loaded with coal, down to the railroad tracks owned or controlled by defendant company, and unloads the coal out of its cars into the cars furnished by the defendant railroad company.

That from October 1, 1899, to May 1, 1901, the said plaintiff owned, in connection with its said Gal-

litzin Colliery, a short line of railroad leading from the said last mentioned colliery to the defendant's railroad or its branches, as well as a small locomotive which hauled the empty railroad cars from the junction of the said short line with the defendant's railroad or its branches, to the said colliery and then after the said colliery company had loaded the said cars, hauled them back to the said junction, from which point the defendant railroad hauled the said cars to their points of destination. This was exactly similar to what was done by the said Altoona Coal and Coke Company and the Glen White Coal and Lumber Company on their respective short line railroads, and more service than was rendered by the said Millwood Coal Company.

That during the periods of the plaintiff's ownership of its said collieries, the said Latrobe Coal and Coke Company owned a short line railroad leading from its said collieries to the said defendant's railroad, or its branches, over which the empty and loaded cars were transported between the collieries of the last mentioned company and the junction of the said short lines with the defendant's railroad, or its branches, as aforesaid, by the defendant with its own motive power and then the loaded cars were taken to their destination. The said Latrobe Coal and Coke Company did not own any small locomotive, or supply any motive power upon the said short line of railroad.

That during the periods of the plaintiff's ownership of its said collieries, the said Bolivar Coal and Coke Company owned neither a short line railroad between its collieries and the defendant's railroad, or its branches, nor any locomotive, and supplied no motive power for transporting its products from its collieries to the railroad of the defendant company, or its branches; but on the contrary the said defendant railroad not only owned the short line railroad, leading from the defendant railroad to the said Bolivar Coal

and Coke Company's collieries, but supplied all the motive power in hauling the said product from the said mines to market.

That during the entire period of ownership by the said plaintiff of all of its said collieries (except the said Gallitzin colliery, and as to it, from April 1, 1897, to October 1, 1899) the plaintiff owned the several short lines of railroad between the said collieries and the defendant railroad, or its branches, over which the coal and coke were transported by the said defendant, with its own motive power, from the said collieries to the junction of the said short lines with the said defendant railroad, or its branches. As to the Gallitzin colliery from October 1, 1899, to May 1, 1901, the said plaintiff owned not only the said short line of railroad, but supplied the motive power as well, as has been fully stated above.

That all coal and coke produced and shipped to points without the State of Pennsylvania from all the above mentioned collieries, including those owned by the plaintiff as well as those owned by other persons or corporations, respectively, was shipped over the railroad of the said defendant company, or its branches, or railroads leased, controlled or operated under a traffic arrangement with the defendant, and said defendant carried the said coal and coke to market as a common carrier.

That the coal and coke produced and shipped over the defendant's railroad, or its branches or connections, by the said plaintiff from the said Gallitzin colliery, between October 1, 1899, and May 1, 1901, as well as the coal and coke shipped during the last mentioned period from the collieries of the Altoona Coal and Coke Company, Glen White Coal and Lumber Company and the Millwood Coal Company by their respective owners, was carried to the same general markets, and that the said defendant in the transportation of all the said

coal and coke did for the plaintiff and for the said Altoona Coal and Coke Company, Glen White Coal and Lumber Company and Millwood Coal Company like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions.

That the defendant, as a common carrier, was in duty bound, in fixing freight rates for the transportation of coal and coke under substantially similar circumstances and conditions, to treat every shipper alike, but the defendant, during part of the period of the ownership by the plaintiff of its said Gallitzin colliery, to wit, from October 1, 1899, to May 1, 1901, disregarding its duty in this respect, and without the knowledge or consent of the plaintiff, illegally and unlawfully allowed and paid to the said Altoona Coal and Coke Company and the Glen White Coal and Lumber Company (which companies owned and operated with their own motive power the short line railroads connecting their said collieries with the railroad of the defendant company, or its branches) and to the Millwood Coal Company (which, as above stated, transports its product to defendant's track in its cars, and there unloads it into defendant's cars), during the said period from October 1, 1899, to May 1, 1901, a special rebate or drawback of fifteen cents per ton on all of the coal and coke which passed over the said short lines of the said Altoona Coal and Coke Company, Glen White Coal and Lumber Company and Millwood Coal Company, from their said collieries to the junction of the said short lines with the defendant's railroad and thence carried by defendant to points without the State of Pennsylvania, but allowed no rebate or drawback, or any compensation whatever to the plaintiff for the coal and coke shipped by the plaintiff and carried by the said defendant to points without the State of Pennsylvania, and which coal and coke passed over the short

line of the plaintiff from the said plaintiff's collieries to the junction of said short line with defendant's railroad, or its branches and which was hauled to such last mentioned junction by motive power owned and operated by the plaintiff.

That during the said period, to wit, from October 1, 1899, to May 1, 1901, there was produced from plaintiff's said Gallitzin colliery, and shipped by said plaintiff and carried by said defendant to market without the State of Pennsylvania, upwards of 73,626 tons of coal and 63,412.8 tons of coke, all of which coal and coke passed over the plaintiff's said short line of railroad connecting plaintiff's said Gallitzin colliery and the defendant's railroad, and was hauled from the said colliery to the junction of plaintiff's short line of railroad with defendant's railroad, by motive power owned and operated by the plaintiff.

That during the period of the said plaintiff's ownership of its said collieries the coal and coke produced and shipped by said plaintiff and carried by said defendant from the said Columbia collieries Nos. 4, 6 and 7, Bennington colliery, Hastings colliery and Gallitzin colliery, between April 1, 1897, and October 1, 1899, as well as the coal and coke shipped by the said Latrobe Coal and Coke Company and the Bolivar Coal and Coke Company from their said collieries, between April 1, 1897, and May 1, 1901, was carried to the same general markets, and that the said defendant in the transportation of all of said coal and coke did for the plaintiff and for the said Latrobe Coal and Coke Company and the Bolivar Coal and Coke Company like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions.

That the defendant during the period of the plaintiff's ownership of the said Columbia collieries Nos. 4, 6 and 7, Bennington colliery, Hastings colliery, and

Gallitzin colliery from April 1, 1897, to October 1, 1899, disregarding its duty and without the knowledge or consent of the plaintiff, illegally and unlawfully allowed and paid to the above mentioned colliery companies and others owned by persons and corporations other than the plaintiff, which did not own or supply motive power to move the coal and coke produced by them from the respective collieries to the railroad of the defendant company, or its branches, viz: to the Latrobe Coal and Coke Company and the Bolivar Coal and Coke Company and others, during the said period, a special rebate or drawback of ten cents per ton on all coal and coke produced by said Latrobe Coal and Coke Company, and a special rebate or drawback of ten cents per ton on all coke produced by said Bolivar Coal and Coke Company which passed over the said short lines connecting said two last mentioned collieries with the railroad of the defendant company or its branches, but allowed no rebate or drawback or any compensation whatever to the plaintiff for the coal and coke shipped on the defendant company's railroad or its branches by the plaintiff, and which passed over the short line of the plaintiff, from the said plaintiff's collieries, to the junction of said short line with defendant's railroad or its branches.

That during the period from April 1, 1897, to October 1, 1899, plaintiff produced from its Gallitzin colliery, and shipped to market without the State of Pennsylvania, 97,095 tons of coal and 77,629 tons of coke, which coal and coke was carried to said market by the said defendant, and passed over plaintiff's short line railroad from the said colliery to defendant's railroad, being hauled by motive power furnished by defendant company.

That during the period from April 1, 1897, to May 1, 1901, plaintiff produced from its Columbia colliery

No. 4, and shipped to market without the State of Pennsylvania, 133,191 tons of coal, which coal was carried to said market by the said defendant, and passed over plaintiff's short line of railroad from the said colliery to defendant's railroad, being hauled by motive power furnished by defendant company.

That during the period from December 8, 1898, to May 1, 1901, plaintiff produced from its Columbia colliery No. 6, and shipped to market without the State of Pennsylvania 18,333.2 tons of coal, which coal was carried to said market by the said defendant, and passed over plaintiff's short line railroad from the said colliery to defendant's railroad, being hauled by motive power furnished by said defendant company.

That during the period from July 20, 1899, to May 1, 1901, plaintiff produced from its Columbia colliery No. 7 and shipped to market without the State of Pennsylvania, 27,134.4 tons of coal, which coal was carried to said market by the said defendant, and passed over plaintiff's short line railroad from the said colliery to defendant's railroad, being hauled by motive power furnished by defendant company.

That during the period from October 30, 1899, to May 1, 1901, plaintiff produced from its Bennington colliery, and shipped to market without the State of Pennsylvania, 10,271.9 tons of coal, and 45,424.8 tons of coke, which coal and coke was carried to said market by the said defendant, and passed over plaintiff's short line railroad from the said colliery to defendant's railroad, being hauled by motive power furnished by defendant company.

That during the period from April 1, 1897, to May 1, 1901, plaintiff produced from its Hastings colliery and shipped to market without the State of Pennsylvania, 108,375.2 tons of coal and 235,930.89 tons of coke, which coal and coke was carried to market by the said defendant, and passed over plaintiff's short line rail-

road from said colliery to defendant's railroad, being hauled by motive power furnished by defendant company.

That for the services rendered as aforesaid to the plaintiff in transporting to market without the State of Pennsylvania the coal and coke produced by and shipped from plaintiff's said Gallitzin colliery during the period from October 1, 1899, to May 1, 1901, the defendant company has, by reason of the aforesaid rebate of fifteen cents per ton, allowed to the said Altoona Coal and Coke Company, Glen White Coal and Lumber Company and Millwood Coal Company, charged, demanded, collected and received from the plaintiff a greater compensation than it has charged, demanded, collected or received from the last mentioned colliery companies, for rendering substantially the same service as rendered to the plaintiff.

That for the services rendered as aforesaid to the plaintiff in transporting to market without the State of Pennsylvania the coal and coke produced by and shipped from plaintiff's said Gallitzin colliery during the period from April 1, 1897, to October 1, 1899, and from plaintiff's said Columbia collieries Nos. 4, 6 and 7, Bennington colliery and Hastings colliery during plaintiff's period of ownership of said last mentioned collieries, the defendant has, by reason of the aforesaid rebate of ten cents per ton, allowed to the said Latrobe Coal and Coke Company on all coal and coke shipped by said colliery as aforesaid, and to the said Bolivar Coal and Coke Company on all coke shipped by said colliery as aforesaid, charged, demanded, collected and received from the plaintiff a greater compensation than it has charged, demanded, collected or received from the last mentioned colliery companies for rendering substantially the same services as rendered to the plaintiff.

That the said charges of fifteen and ten cents per

ton for coal and coke, made to plaintiff, respectively, over and above the charge made as aforesaid to the Altoona Coal and Coke Company, Glen White Coal and Lumber Company, Millwood Coal Company, and as aforesaid to the Latrobe Coal and Coke Company and to the Bolivar Coal and Coke Company, constituted an illegal, unlawful and unreasonable discrimination against the plaintiff as a shipper of coal and coke over the lines of the defendant's said railroad, and that by reason of the premises the plaintiff has been damaged in the sum of \$20,555.70 for the coal and coke shipped by said plaintiff from its Gallitzin colliery between October 1, 1899, and May 1, 1901, where the over-charge was fifteen cents per ton as aforesaid and in the sum of \$75,338.53 for the coal and coke shipped by said plaintiff from its other collieries, including the coal and coke from the said Gallitzin colliery from April 1, 1897, to October 1, 1899, where the over-charge was ten cents per ton as aforesaid.

That payment of said aggregate sum of ninety-five thousand eight hundred and ninety-four and 23-100 dollars has been duly demanded, but that defendant has failed, neglected and refused to pay the same or any part thereof. Wherefore the plaintiff demands judgment against the defendant for the sum of Ninety-five thousand eight hundred and ninety-four and 23-100 dollars.

GEORGE S. GRAHAM,
Attorney for Plaintiff.

PHILADELPHIA COUNTY, ss:

R. M. Law being duly sworn according to law, doth depose and say that he is Treasurer of the Mitchell Coal and Coke Company, the plaintiff in the above case, and that the facts set forth in the foregoing statement

as the basis of claim therein, are true, to the best of his knowledge, information and belief.

R. M. LAW (Signed).

Sworn and subscribed to before
me this 29th day of March, A. D.
1905.

(Signed) RICHARD C. ELLIS,
Notary Public.

Commission expires March 7th, 1907.

To Clerk U. S. C. C.:

Enter rule on defendant to plead in fifteen days
or judgment *sec. reg.*

11-20-05

GEO. S. GRAHAM,
Atty. for Plff.

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Session, 1905. No. 4.

MITCHELL COAL AND COKE COMPANY
vs.
PENNSYLVANIA RAILROAD COMPANY.

PLEA.

Filed December 5, 1905.

Defendant in the above pleads "Not Guilty".

JOHN G. JOHNSON,
per E. A. Waters,
Attorney for said Defendant.

Dec. 4, 1905.

To Clerk U. S. C. C.

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Session, 1905. No. 4.

MITCHELL COAL AND COKE COMPANY
vs.
PENNSYLVANIA RAILROAD COMPANY.

PLEA.

Filed April 20, 1906.

And for a further plea in this behalf the said defendant, by leave of court, says:

That the plaintiff ought not to have or maintain its action as to any shipments made by it prior to the 14th day of March, A. D. 1899, because as to all said shipments the right of action accrued more than six years before the institution of this action, from which it results that any action in respect thereof had been barred by the Statute of Limitations prior to the issuance of the writ herein.

JOHN G. JOHNSON,
per M. B. Saul,
Attorney for Defendant.

April 20, 1906.

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Session, 1905. No. 4.

MITCHELL COAL AND COKE COMPANY
vs.
PENNSYLVANIA RAILROAD COMPANY.

PLEA.
Filed April 20, 1906.

And for a further plea in this behalf the said defendant, by leave of Court, says:

That the plaintiff ought not to have or maintain its action as to any shipments made by it prior to the 14th day of March A. D. 1900, because to all said shipments the right of action accrued more than five years before the institution of this action, from which it results that any action in respect thereof had been barred by the Statute of Limitations prior to the issuance of the writ herein.

JOHN G. JOHNSON,
per M. B. Saul,
Attorney for Defendant.

April 20, 1906.

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Session, 1905. No. 4.

MITCHELL COAL AND COKE COMPANY
vs.
PENNSYLVANIA RAILROAD COMPANY.

REPLICATION.
Filed April 18, 1907.

Similiter et issue.

GEORGE S. GRAHAM,
Attorney for Plaintiff.

To the Clerk of said Court.

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Sessions, 1905. No. 4.

MITCHELL COAL & COKE CO.

vs.

PENNSYLVANIA RAILROAD COMPANY.

BILL OF EXCEPTIONS.

Be it remembered that in the said April Sessions came plaintiff into the said Court and impleaded defendant in a certain action of trespass, etc., in which plaintiff declared (prout narr) and defendant pleaded (prout plea) and plaintiff replied (prout replication). Thereupon issue was joined between them. And afterwards, to wit, at a session of the said Court held at the County of Philadelphia, for the Eastern District of Pennsylvania aforesaid, before the Honorable John B. McPherson, Judge of the said Court, on April 26, 1907, by agreement of the parties said issue between the parties was referred to Theodore F. Jenkins, as Referee, to take the testimony, report the same to the Court, report findings of fact and conclusions of law, report whether judgment should be entered for plaintiff or for defendant, and if judgment should be entered for plaintiff, in what amount. Thereupon said cause was proceeded with before said Referee, before whom came as well the plaintiff as the defendant by their respective attorneys,

and before said Referee counsel for plaintiff and counsel for defendant offered certain evidence, and all the evidence offered by both plaintiff and defendant before the Referee has been filed by said Referee, and thereupon the Referee made a report to the Court, concluding that plaintiff was entitled to judgment against the defendant in the sum of \$42,373.65. Thereupon defendant filed exceptions, which were argued before said Referee, and the said Referee thereupon found that plaintiff was entitled to judgment against the defendant in the sum of \$42,373.65, and thereupon the Referee filed in this Court six stipulations of the parties, all the testimony heard before the Referee, request for allowance of counsel fee to plaintiff, Referee's report, defendant's exceptions to the Referee's report, and the report of the Referee upon exceptions. And thereupon said exceptions were argued before this Court and an opinion rendered thereon. And defendant, on November 26, 1910, having moved the Court to dismiss plaintiff's action on the ground that the Court had no jurisdiction thereof, the Court granted said motion to dismiss and allowed to plaintiff an exception to said order, and final judgment was entered for defendant and against plaintiff upon the sole ground that the Court had no jurisdiction of plaintiff's suit.

IN THE
Circuit Court of the United States,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Term, 1905. No. 4.

MITCHELL COAL & COKE COMPANY
vs.
PENNSYLVANIA RAILROAD COMPANY.

STIPULATION.
Filed June 2, 1910.

It is agreed that all questions of law and fact in this case shall be submitted to Hon. Theodore F. Jenkins, as Referee, whose duty it shall be to take testimony; to report the same to the Court; to report Findings of Fact and Conclusions of Law; also to report whether judgment should be entered for plaintiff or for defendant, and, if judgment should be entered for the plaintiff, in what amount.

The Referee shall have all the powers of a Master in Chancery and his final report shall have the same force and effect which would attach to a report of a Master in Chancery.

Either party shall have a right to file exceptions

with said Referee within fifteen days of written notice of intention to file his report.

It shall be the duty of the Referee to report any such exceptions so filed with him, together with any matter which he may deem pertinent by way of fact or law, in connection therewith.

The Court shall hear the case upon said report as though said report were that of a Master in Chancery, and shall enter such judgment thereon as it shall deem proper.

Either party shall have a right to appeal from the judgment of the Court, entered upon said report and exceptions to the Circuit Court of Appeals. The record upon said appeal shall include the testimony taken by the Master.

The judgment of affirmance or reversal by said Circuit Court of Appeals shall be subject, like any other judgment by said Court, to the right of the parties to petition the Supreme Court of the United States for certiorari.

The employees of the defendant shall appear before the Referee upon reasonable notice, without the necessity of service of the subpoena. All relevant books and papers will be produced before the Referee.

Unless the plaintiff shall desire otherwise, the hearing before the Referee will proceed *de die in diem*. Both parties will facilitate the hearing and determination of the case.

GEO. S. GRAHAM,
Attorney for Plaintiff.

JOHN G. JOHNSON,
Attorney for Defendant.
April 24-07.

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Term, 1905. No. 4.

MITCHELL COAL & COKE COMPANY
vs.
PENNSYLVANIA RAILROAD COMPANY.

ORDER OF COURT REFERRING CASE TO THEO-
DORE F. JENKINS.

Filed April 26, 1907.

And now, this 26th day of April, 1907, the Court upon agreement of counsel for plaintiff and defendant, refers the case to Hon. Theodore F. Jenkins, as Referee, to act in accordance with the terms of the written agreement of the parties.

J. B. McP.

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Term, 1905. No. 4.

MITCHELL COAL & COKE COMPANY
vs.
PENNSYLVANIA RAILROAD COMPANY.

AGREEMENT OF PARTIES AS TO COSTS, ETC.
Filed Apr. 26, 1907.

It is hereby agreed by and between the parties to the above suit, that the costs of the reference in the above case, including the fee to be paid the Honorable Theodore F. Jenkins, Referee, as well as the stenographer's costs, shall be paid, one-half by the plaintiff and one-half by the defendant.

GEO. S. GRAHAM,
Attorney for Plaintiff.

JOHN G. JOHNSON,
Attorney for Defendant.

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Term, 1905. No. 4.

MITCHELL COAL & COKE COMPANY
vs.
PENNSYLVANIA RAILROAD COMPANY.

Proceedings before Hon. Theodore F. Jenkins,
Referee, at his offices 1100-1102 Girard Building, Phil-
adelphia.

Tuesday, April 30, 1907, 11 a. m.

Present:

The Referee, HON. THEODORE F. JENKINS.

JOSEPH GILFILLAN, Esq., for Plaintiff.

FRANCIS L. GOWEN, Esq., for Defendant.

Mr. Gilfillan offered in evidence statement of ship-
ments of coal from April 1, 1897, to May 1, 1901, from
the Gallitzin Colliery to points outside the State of
Pennsylvania.

Statement marked "Gallitzin Colliery Coal, T. F.
J., April 30, 1907."

Mr. Gilfillan also offered in evidence statement of
coke from April 1, 1897, to May 1, 1901, from the Gal-
litzin Colliery to points outside the State of Pennsyl-
vania.

Statement marked "Gallitzin Colliery Coke, T. F.
J., April 30, 1907."

Mr. Gilfillan also offered in evidence statement of shipments of coal from April 1, 1897, to May 1, 1901, from Hastings Collieries to points outside the State of Pennsylvania.

Statement marked "Hastings Colliery Coal, T. F. J., April 30, 1907."

Mr. Gilfillan also offered in evidence statement of shipments of coke from April 1, 1897, to May 1, 1901, from Hastings Colliery to points outside the State of Pennsylvania.

Statement marked "Hastings Colliery Coke, T. F. J., April 30, 1907."

Mr. Gilfillan also offered in evidence statement of shipments of coal from Bennington Colliery from October, 1899, to May 1, 1901, to points outside the State of Pennsylvania.

Statement marked "Bennington Coal, T. F. J., April 30, 1907."

Mr. Gilfillan also offered in evidence statement of shipments of coke from Bennington Colliery from October, 1899, to May 1, 1901, to points outside the State of Pennsylvania.

Statement marked "Bennington Colliery Coke, T. F. J., April 30, 1907."

Mr. Gilfillan also offered in evidence statement of shipments of coal from Columbia No. 4 Colliery, from April 1, 1897, to May 1, 1901, to points outside the State of Pennsylvania.

Statement marked "Columbia No. 4 Colliery, Coal, T. F. J., April 30, 1907."

Mr. Gilfillan also offered in evidence statement of shipments of coal from Columbia No. 6 Colliery from December 8, 1898, to May 1, 1901, to points outside the State of Pennsylvania.

Statement marked "Columbia No. 6 Colliery Coal, T. F. J., April 30, 1907."

Mr. Gilfillan also offered in evidence statement of shipments of coal from Columbia No. 7 Colliery from

July 20, 1899, to May 1, 1901, to points outside the State of Pennsylvania.

Statement marked "Columbia No. 7 Colliery Coal, T. F. J., April 30, 1907."

Mr. Gilfillan also offered in evidence statement of shipments of coal from Columbia No. 8 Colliery from October, 1900, to April 30, 1901, to points outside the State of Pennsylvania.

Statement marked "Columbia No. 8 Colliery Coal, T. F. J., April 30, 1907."

(Counsel for defendant agrees that the statement shall be amended so as to include Columbia No. 8 Colliery.)

Defendant's counsel makes no objection to the schedules which have been offered in evidence because of their being merely copies of the entries obtained from the books of the plaintiff, but makes objection to the admissibility of the entries in the books as binding upon it or as evidence against it of shipments made by the plaintiff.

WILLIAM L. SCOTT, having been duly sworn, was examined as follows:

By MR. GILFILLAN:

Q. When did you enter the employ of the Mitchell Coal and Coke Company?

A. October 1st, 1899.

Q. You were with them until Mr. Mitchell passed over the control of the Mitchell Coal and Coke Company to other parties on May 1st, 1901?

A. I was.

Q. Did you have anything to do with the entry of the shipments of coal?

A. I did.

Q. Did you keep the books which show the mines

from which the coal was sent, the numbers of the cars and the destination of the coal?

A. I did.

Q. Have you seen these sheets that have been produced here?

A. I have.

Q. So far as those sheets represent shipments made from October, 1899, to May, 1901, are those sheets, copies of the manifests sent to the Mitchell Coal and Coke Company covering the shipments between those dates?

A. Those are copies from the book, which was a copy from the manifest.

Q. Explain to the Referee the system you had, what you made the entry in the book from, and what it contained?

A. At each mine the mine clerk makes out a report of the dates of shipment, giving the car numbers and consignments, then he makes a similar statement, which is sent to the Pennsylvania Railroad agent at the weighing point, I guess Altoona in every case, and at the scales the weight of each car is added to the sheet sent them.

Q. By whom?

A. By the Pennsylvania Railroad clerks. The original sheet received from the mines is entered into the book from which these statements were taken, an exact copy of car numbers and consignments, and then when the report is received from the Pennsylvania Railroad of weights, that is compared with the entries in the book, and the weight of each car is placed opposite the entry in the shipping book. The report received from the railroad company is practically a record of the shipments from the mines. Down at the bottom there is a certificate saying that the above cars, numbered and consigned, and stated, passed the scales and weighed as shown, something to that effect, and, that is signed by the Pennsylvania Railroad agent, and

those weights and that report are checked up with the entry in the shipping book. So the shipping book kept by us is an exact record of the shipments made from the mines.

Q. And, it is an exact copy of the matter sent by the Pennsylvania Railroad from its Altoona office?

A. Oh, yes; every car is accounted for, and the weights, of course, must agree, because those are the weights we use in billing the coal to the consignee, and, of course, it is checked up with freight bills and other information, which precludes any possibility of mistake in consignments or weights.

Q. A shipper is bound to take the weights the Pennsylvania Railroad gives them?

A. Yes, sir. All sales are made on those weights.

Q. He cannot weigh himself so far as to bind the Pennsylvania Railroad?

A. No, sir.

Q. As I understand it, the shipping books from which these statements have been taken contain the information furnished or checked up from the manifests sent by the Pennsylvania Railroad covering each particular shipment?

A. Oh, yes.

Q. What has become of those manifests or sheets? Do you know where they are?

A. I think possibly they have been destroyed, the ones we received from the Railroad Company.

Q. There is no object of keeping them after they are checked up in the book?

A. No, sir. We do not keep them even for our own information beyond a year or so. The coal has all been paid for and the settlements have all been made on the weights given by the railroad.

Q. These statements were all made up under your direction, not only covering the time when you kept the books, but prior to that, back to April, 1897?

A. Yes, sir.

Q. Are these statements exact copies of the shipping books?

A. To the best of my knowledge they are; yes, sir.

Q. You made them, did you not?

A. Not all of these; no, sir. There were several stenographers and typewriters assisted me.

Cross-examination.

By MR. GOWEN:

Q. Then I understand you that the mine clerk made out in duplicate statements showing the coal shipped from each mine each day?

A. Yes, sir.

Q. And that one of those reports was sent to Mitchell Coal and Coke Company and one was sent to the Pennsylvania Railroad Company?

A. Yes, sir.

Q. And that the entries which were made in the books were made up when the report of the mine clerk was received?

A. Yes, sir. That is the first one.

Q. And that when the report of the mine clerk which went to the Pennsylvania Railroad Company came back to you you then went over the entries to see whether they agreed?

A. Checked the consignments and car numbers and added the weights up.

Q. That was the way the entries were made?

A. Yes, sir.

It is understood that all testimony as to shipments or transactions prior to March 14th, 1900, is objected to on behalf of the defendant.

Defendant's counsel states that it does not propose to object to the admissibility of the copies of the book entries upon any other ground than that those entries are not evidence against the de-

fendant, and it does not now or does not hereafter propose to object to the admissibility of those entries because of the fact that it is not affirmatively proved that all of them were made in the manner referred to in Mr. Scott's testimony.

On the contrary it is willing to stipulate that Mr. Scott and the other bookkeepers who kept these books, would, if called, testify that all the entries made in them were correctly checked over after the receipt of manifests from the railroad company which had been received from the railroad company in the manner mentioned in Mr. Scott's testimony and that the statements in the books correspond with the information furnished by the manifests as to shipments, shippers, weights and destination.

Mr. Gilfillan offered in evidence statement produced on call by the defendant, showing shipments by the Latrobe Coal Company to points outside the State of Pennsylvania of coal from April 1st, 1897, to May 1st, 1901.

Statement marked "Latrobe Coal Company Coal, T. F. J., April 30, 1907."

Mr. Gilfillan offered in evidence statement produced on call by the defendant, showing shipments by the Latrobe Coal Company to points outside the State of Pennsylvania, of coke from April 1st, 1897, to May 1st, 1901.

Statement marked "Latrobe Coal Company Coke, T. F. J., April 30th, 1907."

Mr. Gilfillan also offered in evidence statement produced on call by defendant, showing shipments by the Altoona Coal and Coke Company of coal to points outside the State of Pennsylvania, from April 1st, 1897, to May 1st, 1901.

Statement marked "Altoona Coal and Coke Company Interstate Coal, T. F. J., April 30, 1907."

Mr. Gilfillan also offered in evidence statement produced on call by defendant, showing shipments of coke by the Altoona Coal and Coke Company, to points outside the State of Pennsylvania, from April 1st, 1897, to May 1st, 1901.

Statement marked "Altoona Coal and Coke Company Interstate Coke, T. F. J., April 30, 1907."

Defendant produced on call schedules or statements called for by plaintiff's counsel and stated that these were received in response to requests made to the various companies named for statements from their books showing shipments made by those companies. In producing these statements defendant's counsel admits that they are correct copies of the entries made in the books of the several companies furnishing them and that those entries in the books were made from information obtained from the Pennsylvania Railroad Company, the defendant in the action, in the manner detailed in the testimony of Mr. Scott, and were correctly checked over after the receipt from the railroad company of the manifests referred to in Mr. Scott's testimony.

Defendant's counsel objected to the admission in evidence of any statements showing shipments made by the companies referred to prior to March 14th, 1900.

Adjourned until Wednesday at 11 a. m.

Testimony taken before Richard C. Ellis, Notary Public for the Commonwealth of Pennsylvania, residing in the County of Philadelphia, at his office 512 Crozer Bldg.

Thursday, April 25, 1907, at 3 p. m.

Present:

JOSEPH GILFILLAN, Esq., for Plaintiff.

FRANCIS I. GOWEN, Esq., for Defendant.

It is agreed that this testimony is to be given full force and effect as if the same had been actually taken before the Referee.

DANIEL BROWN, having been duly sworn, was examined as follows:

By MR. GILFILLAN:

Q. Where do you reside?

A. In Derry, Pennsylvania.

Q. You were subpoenaed to come to Philadelphia in the case of the Mitchell Coal and Coke Company against the Pennsylvania Railroad Company?

A. Yes, sir.

Q. What is your occupation?

A. Engineer.

Q. Where are you employed?

A. At Derry.

Q. By whom?

A. The Pennsylvania Railroad Company.

Q. Did you have a run which covered the tracks at Latrobe from 1878 to 1886?

A. Along about there some time. I know it was about 1878 or 1879. It might have been a little later than 1878 when I ran there. I came to Derry in 1879 to run regularly, and that is a good while ago. Along

about 1879 or 1880 I was running on that line, that is doing the work at the Latrobe Coal Works.

Q. Down to about what time?

A. Until about 1886 or 1887, along there.

Q. What did you do with reference to putting cars in and taking them out at the Latrobe Coal Company?

Mr. Gowen objected to the question, because it is immaterial what was done during the period between 1878 and 1886.

A. We put the cars in along at first. There has been a big change made there. We put the cars in with the engine above the tipple and placed them along at the coke ovens, and then took them out when they were loaded.

Q. When you say "we", do you mean the Pennsylvania Railroad Company?

A. Yes, sir. I did the work for the Pennsylvania Railroad Company.

Q. It was a Pennsylvania Railroad locomotive?

A. Yes, sir; it was a Pennsylvania Railroad locomotive I was running.

Q. You put the empties in above the tipple?

A. Yes, sir.

Q. And drew the loaded trains out on to the tracks of the Pennsylvania Railroad Company?

A. Yes, sir.

Q. Was there any engine of any kind belonging to the Latrobe Coal Company there at the mines during that run?

A. Not in my time. Not at that period. There was none there.

(No cross-examination.)

A. C. CALDWELL, having been duly sworn, was examined as follows:

By MR. GILFILLAN:

Q. Where do you live?

A. I live at Bradenville.

Q. By whom are you employed?

A. The Pennsylvania Railroad Company.

Q. How long have you been employed by the Pennsylvania Railroad Company?

A. Since November, 1880.

Q. Where was your run in 1886?

A. In 1886 I was running on the branch.

Q. Where in 1887?

A. The first of August, 1887, I went on what they call the shift, I was doubling with Mr. Brown, I was on the night shift, and he was on the daylight shift.

Q. Did you shift cars in and out of the Latrobe Coal Company's mines?

Objected to by Mr. Gowen, because what was done in 1887 is immaterial.

A. Yes, sir.

Q. Tell us what you did.

A. We pushed the empty cars in, we put the empty cars above the coal tipple so they could go up and down under their chute and load them, and we placed the empty coke cars along the coke track so that they could move them by hand to the runs where they would load them with coke, and then we would take the loaded cars out and put empty cars in.

Q. You were working for the Pennsylvania Railroad then?

A. For the Pennsylvania Railroad Company.

Q. Running an engine on the Pennsylvania Railroad?

A. Yes, sir.

Q. With that engine you put the empties into the tipple where the coal is loaded at the mines, and when there was a trainload of filled cars then you drew the trainload out onto the tracks of the Pennsylvania Railroad?

A. About this trainload, we would take what they

would load and manifest out. Sometimes there were cars left there loaded.

Q. How long did you work on that run?

A. I was on that run from August, 1887, until the 1st of January, 1896. Then I was off for eight months that I ran over to Altoona, and then I went back to the run again and I remained on the same run until May, 1904.

Q. During the years 1897, '98, '99, 1900 and 1901, the Pennsylvania Railroad Company placed empties in at the loading place at the mines of the Latrobe Coal Company, and drew the loaded cars out onto the tracks of the Pennsylvania Railroad Company, did they not?

Mr. Gowen objects to any testimony as to what was done prior to March 14, 1900.

A. About these empty cars, when the cars were put in there when we were doing the work, they pushed them up, that is the coal cars, above the tipple, but there were sometimes they had run out of cars to load coal in, and they would come down with the little engine and get hold of an empty car and draw it above the tipple so they could drop it in and load it. That was only some rare occasions though. They did not amount to very much.

Q. That was very infrequent?

A. Yes, sir.

Q. With that exception?

A. With that exception the railroad engines did the rest.

Q. When you say "did the rest", you mean put the empties in at the tipple where they were loaded and drew the loaded ones out?

A. Yes, sir.

Q. That is true of both coal and coke, is it not?

A. Yes, sir.

Q. When was that little dinky engine put on the Latrobe that you speak about?

A. The Larrie engine. It came there when I was on the hill, that was in 1896.

Q. What is the weight of it, about?

A. About eight tons.

Q. Could it draw one loaded railroad car of coal?

A. It could on a level, but it could not draw a railroad car up any kind of a grade of any account.

Q. As a matter of fact it was not used except to handle an empty car occasionally?

A. An empty car occasionally. It might be where the tippie is now, it would come in under 1896, there is gravity enough to drop these loaded cars down about twenty-five car lengths?

Q. By gravity?

A. Yes, sir. But sometimes they would stop them on what they call the little coke siding, the Johnny Bull track—they would stop a car there, and maybe they could not push it down by hand, and they would get the little engine sometimes to pull that car down, to make a little room there. But it was only on rare occasions. This run I was on, we went on at noon and went off at twelve o'clock at night. That put us down there along between twelve and one o'clock in the day time, and that was about the time they would be finished loading their coke. When they were loading coke they would not load much coal in the forenoon. We were always down there in plenty of time to get those cars out of the road.

(No cross-examination.)

GEORGE C. BLAIR, having been duly sworn, was examined as follows:

By MR. GILFILLAN:

Q. Where do you live?

A. Wilkinsburg.

Q. Where are you employed?

A. By the Pennsylvania Railroad Company.

Q. Where were you employed in 1896?

A. I was hauling this run the eight months that Mr. Caldwell was off.

Q. When did that eight months begin and end?

A. It commenced, as near as I can remember, about the first of the year. I think I went on in January. Him and I traded runs. I ran between Altoona and he wanted to run over the hill, and we traded for those eight months.

Q. It began the 1st of January, 1896?

A. As near as I can tell you. I can't just tell you the exact date for I don't know. It was in January sometime.

Q. Tell us what you did about putting cars into the mines of the Latrobe Coal Company and drawing them out loaded?

Objected to as immaterial.

A. We pushed the empties above the coal tippie, and they drew them down themselves, and when they were loaded we took them out and took them to Derry.

Q. Who is "we"?

A. Me and the crew. I was engineer.

Q. Whose locomotive?

A. It belonged to the Pennsylvania Railroad Company.

Q. You were employed by the Pennsylvania Railroad Company at the time?

A. Yes, sir; doing work for them.

Q. Was that dinky engine there when you first went there?

A. I couldn't say positively. I don't think it was there when I went there first, but it was there before I left.

Q. That was the only engine about there?

A. That was the only engine they had anything to do with.

(No cross-examination.)

SAMUEL H. ALLSHOUSE, having been duly sworn, was examined as follows:

By MR. GILFILLAN:

Q. Where are you employed?

A. I am employed by the Pennsylvania Railroad at Derry.

Q. Where do you live?

A. At Derry.

Q. Were you employed by the Pennsylvania Railroad Company in 1896?

A. Yeh, sir.

Q. Have you been ever since?

A. Yes, sir.

Q. Tell us what you know about placing empty cars in at the tippie of the Latrobe Coal Company's mines?

A. We placed cars there, we pushed them above the tippie so they could drop them in and unload them, the coal cars. The coke cars we put in on their siding, and cut them in three pieces so that they could place them at their runs where they could load them to suit themselves. Then the next day we would go back and draw those loads out with the engine, and take them to Derry with us.

Q. Whose locomotive was it that did this work?

A. The Pennsylvania Railroad Company's engine.

Q. What was your employment?

A. I was conductor.

Q. When did that start so far as you are concerned?

A. I went on there in 1896, along in the Spring of '96, and I left in the Fall of '96; it was November, 1896, when I left it. I was off of it then from that time until 1901. In April, 1901, I went back on it again.

Q. Are you there to date?

A. No, sir; I am not there to date. I left it again.

Q. When?

A. I left it in 1905.

Q. Had the Latrobe Coal Company any engine there when you first went there?

A. No, sir. They hauled their Larries with the endless rope.

Q. When did the engine come on?

A. The engine came on in 1896.

Q. After you went there?

A. Yes, sir; after I was there.

Q. What weight of engine was it?

A. About eight tons.

Q. Was that the only engine that the Latrobe Coal and Coke Company had about there?

A. That was the only one, outside of their stationary engines that they had.

Q. Was that the only engine they had as late as 1904?

A. Yes, sir.

(No cross-examination.)

JAMES F. CONNELLY, having been duly sworn, was examined as follows.

By MR. GILFILLAN:

Q. Where do you live?

A. At Derry.

Q. Where are you employed?

A. At Derry, by the Pennsylvania Railroad Company.

Q. How long have you been employed there?

A. Since 1882, in May.

Q. When did you have this run that took you in the Latrobe Coal Company's mines?

A. I took the run after Mr. Allshouse left it in 1905. I don't know the exact date.

Q. You continued it until when?

A. Up to the present date. I am still on it.

Q. What engine, if any, has the Latrobe Coal Company there?

A. They have a little dinky engine there that they haul the coal for their coke, to charge their ovens.

Q. What is the weight of this engine?

A. I suppose about eight tons.

Q. Is that the only engine they have there?

A. That is the only engine.

Q. Is that the only engine that they have had there during the time that you have been running there?

A. Yes, sir.

Q. What is your occupation?

A. Conductor.

Q. What do you do with regard to putting the empties in and taking the loaded cars out?

A. I take the empties down in the afternoon, and put as many up above the tippie as I can, fill it up, and do the same with the coke, take the loaded coke out and place the coke cars in to be loaded next day in position.

Q. Then, when the cars are filled, what do you do?

A. I fetch them out on the main line in two drafts, and make my train, and fetch them to Derry.

Q. The tippie is where the miners load the coal into the cars?

A. Yes, sir. The tippie is where the man on the tippie drops the coal into the cars.

Q. From the mines?

A. From the mines.

Q. A dinky engine, such as they have there, weighing eight tons, could not move a loaded car of coal unless it was absolutely on level ground, could it?

A. Level ground or down grade. It could not haul it up for a long grade. It could haul an empty car.

Q. This dinky was not used to haul the empties from the tracks of the Pennsylvania Railroad?

A. No, only when it was necessary, when they were out of cars. Somebody would come in and drop their cars on their siding, and would not shove them above the tipple, and they would get out of cars before I could come down, and they would come down, and I have known them to haul as high as four or five cars up there, that is one at a time, to keep their mines in running order.

Q. Empties?

A. Yes, sir.

Q. That is very infrequent?

A. Very infrequent, because I am always down there.

(No cross-examination.)

A. C. CALDWELL, recalled.

By MR. GILFILLAN:

Q. Did the Latrobe Coal Company have any other engine than the little eight ton dinky engine that you have spoken about during the time that you were there, from 1896, to 1904?

A. No, sir; no other engine there.

Q. And it was a Pennsylvania Railroad Company's engine that put in the empties and drew out the loaded cars from the Latrobe Coal Company's mine during the period of from 1896 to 1904?

A. Yes, sir.

Adjourned.

STATE OF PENNSYLVANIA,
CITY AND COUNTY OF PHILADELPHIA. } ss.

I hereby certify that the above named Daniel Brown, A. C. Caldwell, George C. Blair, Samuel H.

Allshouse and James F. Connelly were duly qualified and examined at the time and place stated in the above caption.

RICHARD C. ELLIS, (Seal)
Notary Public.

Commission expires March 7th, 1911.

Wednesday, May 1, 1907.

Present:

THE REFERER.

JOSEPH GILFILLAN, Esq., for Plaintiff.

FRANCIS I. GOWEN, Esq., for Defendant.

Mr. Gilfillan offered in evidence and read letter produced by the defendant on call, dated April 25, 1890, addressed to George M. Taylor, Esq., Auditor Freight Receipts, Pennsylvania Railroad Company, signed by William H. Joyce, G. F. A., as follows:

"Philadelphia, April 25th, 1890.

Geo. M. Taylor, Esq.,

Auditor Freight Receipts.

Dear Sir: Taking effect March 24th, 1890, we arranged to allow Latrobe Coal and Coke Co. for trackage, 10 cents per gross ton on Coal and 10 cents per net ton on Coke, on all their shipments to points reached by or via P. R. R.

Will you please arrange to deduct this lateral on coal to the West before prorating with lines West of Pittsburgh.

Yours truly,

(Signed) Wm. H. Joyce,

G. F. A.

(S)"

Mr. Gilfillan offered in evidence and read letter produced on call by the defendant, dated December 28th, 1901, addressed to Altoona Coal and Coke Company, Altoona, Pennsylvania, signed by J. G. Searles, Coal Freight Agent, of the Pennsylvania Railroad, as follows:

"Dec. 28th, 1901.

Altoona Coal and Coke Co.,
Altoona, Pa.

Gentlemen:—I regret that I am compelled to advise you that taking effect on January 1st, 1902, the lateral allowance to your road on shipments of coke will be entirely discontinued, and the lateral allowance on coal will be reduced to 12c. per gross ton.

Yours truly,
(Signed) J. G. Searles,
G. F. A."

Mr. Gilfillan also offered in evidence and read letter produced by defendant on call, dated December 28th, 1901, addressed to Glen White Coal and Lumber Company, No. 21 South Gay Street, Baltimore, Maryland, signed J. G. Searles, Coal Freight Agent of the Pennsylvania Railroad, as follows:

"Dec. 28th, 1901.

Glen White Coal & Lumber Co.,
No. 21 South Gay St.,
Baltimore, Md.

Gentlemen. I regret that I am compelled to advise you that taking effect on January 1st, 1902, the lateral allowance to your railroad on shipments of coke will be discontinued entirely, but we will for the present continue to allow you 15c. per gross ton lateral on shipments of coal.

Yours truly,
(Signed) J. G. Searles,
G. F. A."

Mr. Gilfillan also offered in evidence and read letter produced on call by defendant, dated December 23rd, 1901, addressed to Mr. John Lloyd, Treasurer, Latrobe Coal Company, Altoona, Pennsylvania, signed by J. G. Searles, Coal Freight Agent, as follows:

"Dec. 23rd, 1901.

Mr. John Lloyd,

PERSONAL

Treasurer Latrobe Coal Co.,
Altoona, Pa.

Dear Sir:—I beg to advise you that taking effect on January 1st, 1902, the arrangement for lateral allowance on shipments of coal and coke will be withdrawn and no allowance will be made on shipments loaded or forwarded on or after that date.

Yours truly,
(Signed) J. G. Searles,
G. F. A."

Mr. Gilfillan also offered in evidence and read letter produced by defendant, dated April 11th, 1901, addressed to Mr. George H. Anderson, President, Bolivar Coal and Coke Company, Chamber of Commerce, Pittsburgh, Pennsylvania, signed by J. G. Searles, Coal Freight Agent, as follows:

"April 11, 1901.

Mr. Geo. H. Anderson,

Prest., Bolivar Coal & Coke Co.,
Chamber of Commerce, Pittsburgh, Pa.

Dear Sir:—I beg to advise you that, taking effect at once, we are compelled to withdraw the arrangements we have had with you for lateral allowance of 15c. per ton, on Coke shipped from your works at Lockport to eastern points.

Yours truly,
(Signed) J. G. Searles,
G. F. A."

J. G. SEARLES, having been duly sworn, was examined as follows:

By MR. GILFILLAN:

Q. Where do you reside?

A. In Philadelphia, at the Hotel Walton.

Q. Where are you employed?

A. I am employed by the Pennsylvania Railroad.

Q. What is your office?

A. General Coal Freight Agent.

Q. How long have you been General Coal Freight Agent?

A. Since June 1st, 1903.

Q. What were you prior to that?

A. Coal Freight Agent.

Q. How long had you been Coal Freight Agent?

A. Since May 1st, 1892.

Q. What were you prior to that?

A. Division Freight Agent at Baltimore.

Q. Who occupied the position of General Coal Freight Agent prior to your incumbency?

A. There was none.

Q. What position did Mr. Joyce occupy from 1890 until he left the employ of the Railroad Company?

A. During a portion of the period he was General Freight Agent. I do not know that I can tell you when he was made Freight Traffic Manager.

Q. What portion of that period was he General Coal Freight Agent?

A. He never was General Coal Freight Agent. Before he was made General Freight Agent he was Coal Freight Agent. During the period from the time that he was advanced to the position of General Freight Agent until I was appointed, there was no Coal Freight Agent. The position was vacant.

Q. William H. Joyce was General Freight Agent April 25th, 1890?

A. Yes, sir.

Q. How long did he continue as General Freight Agent?

A. I cannot say positively, but I think it was some time in 1897.

Q. Then what position did he assume?

A. Freight Traffic Manager.

Q. How long did he remain Freight Traffic Manager?

A. Until June 1st, 1903.

Q. Was there any person selected to fill Mr. Joyce's place as Freight Traffic Manager?

A. Yes, sir.

Q. Who was he?

A. Do you mean when Mr. Joyce left, in 1903?

Q. Yes, sir.

A. Mr. George D. Dixon.

Q. Who became General Freight Agent in 1897 when Mr. Joyce was made General Freight Traffic Manager?

A. Mr. John B. Thayer.

Q. How long did he occupy that place?

A. Until June 1st, 1903. I think I am right about those dates, but they are hard to remember.

Q. June 1st, 1903, you became General Freight Agent?

A. June 1st, 1903, I became General Freight Agent.

Q. Is that the position you still occupy?

A. Yes, sir.

Q. You wrote several letters which you have heard read, to the Altoona Coal and Coke Company, The Glen White Coal and Lumber Company, and Mr. John Lloyd, Treasurer of the Latrobe Coal Company, and to Mr. Anderson, President of the Bolivar Coal and Coke Company, withdrawing or modifying the arrangements as to the lateral allowances?

A. Yes, sir.

Q. How long had those lateral allowances been in

operation prior to the date of the letters withdrawing or modifying the same?

A. As to the Altoona Coal and Coke Company, the Glen White Coal and Lumber Company, and the Latrobe Coal Company, they were in effect when I came here in May, 1892.

Q. How about the Bolivar?

A. The Bolivar, I cannot recall exactly when that was made. I don't know that I have any record of it now.

Q. Was it in operation in 1897?

A. I think so. 1897 or 1898, I don't remember exactly.

Q. I find no letter with reference to the Millwood Company.

A. You didn't ask for that.

Q. Have you such a letter?

A. I think we have a letter, though I am not positive.

Q. Will you produce that tomorrow?

A. Yes, sir.

Q. When did the Millwood's lateral allowance come into operation?

A. I think that was in effect when I came here.

Q. In 1892?

A. Yes, sir.

Q. Tell us what was the lateral allowance on both coal and coke for the Altoona Coal and Coke Company during the period of 1897, 1898, '99, 1900 and 1901?

A. On shipments to Hollidaysburg and intermediate points the allowance on coal was 13 cents per gross ton, on coke 10 cents per net ton. On shipments to points east of Altoona or south of Hollidaysburg on coal 18 cents per gross ton, on coke, 20 cents per net ton.

Q. That applied to both state and interstate?

A. Yes, sir.

Q. Was the lateral allowance on either coke or coal from either of the points that you have just mentioned

higher prior to 1897, and during your term of office as Coal Freight Agent?

A. No, not to my knowledge.

Q. Give us the lateral allowance for coal and coke on shipments of the Glen White Coal & Lumber Company during the period of 1897, '98, '99, 1900 and 1901?

A. On coal 15 cents per gross ton; on coke 15 cents per net ton.

Q. Give us the lateral allowance on both coal and coke for the period of 1897, '98, '99, 1900 and 1901 to the Latrobe Coal Company?

A. On coal 10 cents per gross ton; on coke 10 cents per net ton.

Q. Give us the lateral allowance on coke for the same period, 1897, '98, '99, 1900 and 1901, to the Bolivar Coal and Coke Company?

A. On coke 15 cents per net ton. That allowance applied only on eastbound shipments.

Q. On all the other companies it applied to east and west?

A. Yes, sir. They did not ship any west, though.

Q. Do you know what the allowance to the Millwood Coal Company was during that same period?

A. Yes, sir.

Q. What was the lateral allowance to the Millwood Company during 1897, '98, '99, 1900 and 1901 on coal?

A. From April 1st, 1897, to March 31st, 1899, 15 cents per gross ton on coal; and from April 1st, 1899, to May 1st, 1901, 10 cents per gross ton, eastbound shipments.

Q. Was the lateral allowance to the Altoona Coal and Coke Company that you have testified to only on eastbound shipments, or was it on all coal produced by the mines?

A. I cannot answer that question definitely, because I have not looked as to that, but I am under the impression that it applied only on eastbound busi-

ness. The fact is they shipped very little coal or coke westbound.

Q. Is the same true of the Glen White Coal and Lumber Company eastbound shipments?

A. Yes, sir. I would not like to say positively as to westbound shipments, but that is my impression now.

Q. Will you look it up and let us know tomorrow?

A. I will.

Q. You are of the same impression as to Latrobe?

A. No, the Latrobe got the lateral allowance on both east and westbound. The copy of the letter you have here states that.

Q. You mean the letter of Mr. Joyce?

A. Yes, sir.

Q. How about the Bolivar?

A. The Bolivar applied only on eastbound business.

Q. And the Millwood?

A. The Millwood only on eastbound shipments.

Q. You spoke about a point, Hollidaysburg, that the allowance was 13 cents. Where is Hollidaysburg situated?

A. It is on the Hollidaysburg branch, they call it. It is a few miles south of Altoona, I think, but it is reached by a branch that goes off at Altoona.

Q. When you spoke in your testimony about Hollidaysburg and intermediate points, you mean between the mines of the Altoona Coal Company, Hollidaysburg, and intermediate points?

A. Yes, sir.

Q. These lateral allowances were paid to the various companies, the Altoona Coal and Coke Company, the Glen White Coal and Lumber Company, the Latrobe Coal Company, the Bolivar Coal and Coke Company and Millwood Coal Company?

A. Yes, sir; during the period specified.

Cross-examination.

By MR. GOWEN:

Q. I think you stated that the only one of these companies whose allowance you arranged for was the Bolivar?

A. Yes, sir.

Q. Are you familiar with the location of the Bolivar's operations?

A. I am familiar with the location of the Bolivar's operations?

Q. Have you seen the Bolivar's operations?

A. Yes, sir.

By MR. GILFILLAN:

Q. At the time the allowance was fixed?

A. At the time the allowance was fixed I had seen it, yes; but I never stopped at Bolivar to examine the property or to go through the mines. I passed there, I suppose, hundreds of times—I don't know how many.

Q. You say you passed by where the Bolivar operation was?

A. Yes, sir.

Q. How far was the Bolivar operation from the train in which you were passing; how many feet?

A. It is within sight.

Q. Is it a mile?

A. I could not tell you.

Q. Is it a half mile?

A. I should hardly think it is. My recollection is it is quite close. It is only a short distance.

Q. But you never got off and examined it?

A. No, sir.

Q. All you know about it is by passing on a railroad train?

A. Yes, sir; and from the description of its location in our siding book.

Q. That is information made up by somebody else?

A. Yes, sir; we use it officially, though.

Q. Had you been riding by it prior to the date when you took part in fixing this rate?

A. Yes, sir.

By MR. GOWEN :

Q. The various coal producing districts tributary to the Pennsylvania Railroad Company are divided up into certain districts for the purpose of freight rates, are they not?

A. Yes, sir.

Q. In which district was the Bolivar operation located?

A. Latrobe.

Q. Where is the Latrobe region located with reference to the region in which the Mitchell Coal and Coke Company's mines were located?

A. West.

Q. They were in what district?

A. In the so-called Clearfield.

Q. Which is west of the Latrobe District?

A. Yes, sir.

Mr. Gowen asks for leave to examine the witness generally as to the reasons for the various allowances to which he has testified.

Mr. Gilfillan objects as not cross-examination.

Objection sustained.

Exception noted for defendant.

The referee states that so far as such subjects are concerned the witness must be considered as the witness for the defendant.

Mr. Gowen says that then he will not examine the witness further.

By MR. GOWEN :

Q. With reference to the shipments of the Altoona Coal and Coke Company, please state whether any lateral allowance was made to the Altoona Coal and Coke

Company on shipments with that company made to Altoona of supply coal for the Pennsylvania Railroad Company?

A. No, sir; there was no allowance made on that.

Q. Were there any other shipments to Altoona on which no allowance was made, or is that the only exception?

A. I don't know that I could testify to that positively, but we certainly allowed them nothing on the coal for use on our own road, either to Altoona or any other point.

By MR. GILFILLAN:

Q. You saw the statements furnished by Mr. Gowen of the shipments of the Altoona Coal and Coke Company, did you not?

A. No, sir; I did not.

Q. Have you with you the statements of the money paid the Altoona, Glen White, Bolivar and Latrobe Coal Companies?

A. I have. (Statement produced.)

Witness withdrawn for the present.

J. L. MITCHELL, having been duly sworn, was examined as follows:

By MR. GILFILLAN:

Q. Where do you reside?

A. At Seventeenth and Chestnut Streets, Philadelphia, at the Blenheim.

Q. Were you president of the Mitchell Coal and Coke Company during the years 1897, '98, '99, 1900 and 1901?

A. Yes, sir.

Q. Did you have active management and control of the company during those years?

A. Yes, sir.

Q. Have you seen the statements that were prepared in your office, and which were here yesterday, showing the shipments by the Mitchell Coal and Coke Company of coal and coke both to points within the State and without the State by the Pennsylvania Railroad?

A. Yes, sir; I had them prepared.

Q. Were those shipments actually made?

A. Yes, sir.

Q. Were they actually made as contained on those sheets?

A. Yes, sir.

Q. Did you have anything to do with the arranging for the rates for the transportation of the coal with the officials of the Pennsylvania Railroad?

A. Yes, sir.

Q. Tell the Referee just what was done with relation to fixing the rates and about the settlements that occurred during the period when shipments were made at rates different from the so-called quoted or published rates, and who was bound to pay the freight? I mean from 1897 down to and including 1901.

A. I think in 1897 to probably April, 1898, when there were those published rates, we paid freight according to the tariff rates given, and in 1898 and 1899, and I think up to some time in 1900, if we wanted to ship we had to go to Mr. Searles and get a rate, that is the open rate would probably be a dollar and a half, and he would give you a rate may be of a dollar and twenty cents or a dollar and thirty cents.

Q. Did you go before the shipment was made?

A. Yes, sir.

Q. Was any attention paid to the open rate?

A. Very little.

Q. Would shipments be made under the rate quoted by Mr. Searles during this period?

A. Yes, sir.

Q. Who was responsible for the freight?

A. The shipper.

Q. Who was responsible on this tonnage contained in those shipments which have been submitted to the Referee as shipments made by the Mitchell Coal and Coke Company?

A. The shipper was always responsible. Sometimes the consignee paid the freight and deducted it from the bill.

Q. Was the freight rate as quoted by Mr. Searles paid on all those shipments contained in those statements?

A. Yes, sir.

Q. And any time the consignee paid it he deducted it from the bills?

A. Yes, sir. Very often the consignee would pay the published rate and deduct it from the bill, and sometimes it would only leave us forty or fifty cents a ton for coal, and the balance came back from the Railroad Company.

Q. How did the balance come back from the Railroad Company?

A. We put in a claim at the end of the month in cases of that kind.

Q. For the difference between the open rate and the rate quoted?

A. Yes, sir.

Q. Was that taken into consideration in making your contracts for the sale of the coal to your consignee, the fact that you would get this?

A. Yes, sir; always. It would have to be.

Q. Who was finally responsible for the freight rates for the carrying of all this coal shipped by the Mitchell Coal and Coke Company, the consignee, or the shipper?

A. The shipper would be the responsible party.

Q. And sometimes it would be paid by the hand of the consignee and credit would be given the consignee in his bill?

A. Yes, sir.

Q. Was that responsibility of the shipper to the railroad company for the rates the same when the coal was sold F. O. B. mines?

A. Yes, sir; practically the same. That is, we gave a man a price on the coal a dollar and a quarter at the mines and the rate from our mines to that point is so much, and we would be responsible for that rate.

Q. When you sold coal, did you always tell the man what the rate would be to that point where he was?

A. In those years that the rebates were we did not tell them. In those years we would quote him a price delivered.

Q. Delivered at the destination?

A. What his coal would cost him at the point of destination.

Q. Explain to us what you did after this period of the rebating between the open rate and the quoted rate was stopped, about the selling of the coal?

A. Sometimes it was sold at a delivered price at point of destination and freight prepaid, but not very often. Other times it was deducted from the bill, and other times it was just billed at the mines and prepaid.

Q. As I understand it there were three methods; the coal delivered at the point of destination at a delivered price?

A. Yes, sir.

Q. In some of the cases you prepaid the freight?

A. Yes, sir.

Q. In others of the cases the consignee paid the freight and deducted it from your bill?

A. Yes, sir.

Q. And in the other class of cases where it was sold F. O. B. the mines, the consignee paid the freight?

A. Yes, sir.

Q. In all of those classes, who made arrangements with the Pennsylvania Railroad Company as to what the freight rate was?

A. When there was any difference in the rate over the published rate, the shipper always made it, and the shipper always got a copy of the open rates and notified his consignees what the rate would be, though the shipper was the responsible party for the freight.

Q. No matter how the coal was sold?

A. Yes, sir.

Q. And if there was any change in the rates, who was responsible for the excess?

A. If the rates were raised we notified them. Probably we would not notify them as quick if they were reduced.

Q. To whom did the Railroad look in all these cases for the payment of freight?

A. To the shipper, and the shipper was the party that furnished the rates.

Q. I show you a map marked "P. R. R., Pgh. Division", plan and profile of the tracks of the Pennsylvania Coal and Coke Company near Gallitzin. Does that map show correctly the length of the tracks of the new Pennsylvania Coal and Coke Company, but the then Mitchell Coal and Coke Company's railroad tracks, running from the Pennsylvania's main line to the Gallitzin mines?

A. It is correct, except it is longer now than it was then.

Q. How much longer is it now than it was in April or May of 1897?

A. When I sold out the Mitchell Coal and Coke Company, about station 50 was the end of the track; somewhere near there. I think it is 1700 or 2000 feet, about 1800 feet longer now than it was at that time.

Q. How much longer is it than it was in 1899?

A. I think they have added about 1800 feet since 1899.

Q. When was the 1800 feet added? Was it subsequent to May 1st, 1901?

A. Yes, sir; since May, 1901. It was added, I think, in 1902.

Q. So that, during 1897, 1898, 1899, 1900, up to May 1st, 1901, the tracks were about 1700 feet less than they are now?

A. Yes, sir.

Q. How long was it, approximately, during the period from 1897 down to May, 1901—how many miles?

A. I think it was just about a mile. It might have been a little longer.

Q. What kind of track was it?

A. It was standard gauge railroad track. In places it was two or three tracks wide.

Q. Have you seen the tracks of the Altoona Coal and Coke Company?

A. Yes, sir.

Q. Are the tracks at Gallitzin the same character of tracks?

A. Practically. They are the standard gauge track.

Q. Have you seen the Glen White?

A. Yes, sir.

Q. Is that similar?

A. Yes, sir.

Q. What is the length of the Altoona?

A. The Altoona is about three miles, I think.

Q. What is the length of the Glen White?

A. Something less than two miles?

Q. Have you seen the Millwood?

A. Yes, sir. It is a good while ago, though.

Q. From 1897 down to May, 1901, was that a similar character of track?

A. The siding is the same, but it is a narrow gauge road; they haul their coal over from the mines to the railroad—three feet gauge.

Q. What about the Bolivar?

A. The Bolivar tracks are right alongside of the railroad; part of them might be on the right-of-way.

Q. How about the Latrobe?

A. They have a siding about 3,000 feet long.

Q. How long was the Glen White?

A. I think it is a little less than two miles.

Q. How long was the Millwood, the narrow gauge?

A. There were between two and three miles of narrow gauge track there.

Q. How long was the Bolivar?

A. Probably 2500 feet.

Q. How long was the Latrobe?

A. I think it was 3000 feet in length. Then, there were three or four tracks there.

Q. Do you know the grade of the Millwood?

A. No; I couldn't say what it is.

Q. Had the Altoona Coal and Coke Company any motive power of its own?

A. Yes, sir.

Q. What was it?

A. It was a standard locomotive. It is an older style than what the Pennsylvania Railroad uses now.

Q. Do you know whether it used the locomotive to draw in empties and draw out the loaded cars?

A. Yes, sir.

Q. How about the Glen White?

A. They had a locomotive, only it was very much lighter than the Altoona.

Q. How about the Millwood?

A. They had a light locomotive. It is a narrow gauge locomotive.

Q. How about the Bolivar?

A. They had no locomotive.

Q. How about the Latrobe?

A. They had no locomotive.

By THE REFEREE:

Q. You understand you have been testifying as to between 1897 and 1901 as to the length of these sidings?

A. Yes, sir.

By MR. GILFILLAN:

Q. Did the Latrobe Coal Company have anything in the shape of motive power for any purpose during those years, from 1897 to 1901?

A. Yes, sir. They had a little dinky locomotive on top of their coke ovens hauling the larries to charge their ovens.

Q. But not for the purpose of bringing in the empty cars and drawing out the loaded ones to the junction of the lateral railroad with the Pennsylvania Railroad tracks?

A. Occasionally they might haul up an empty car.

Q. It could not pull a loaded coal car, could it?

A. It might pull it on a level track.

Q. Did you have a locomotive for your Gallitzin colliery?

A. I did from October, 1899, I think, to May, 1901.

Q. What kind of a locomotive was it?

A. Standard gauge.

Q. Did it haul in the empties and draw out the loaded cars?

A. Yes, sir.

Q. The same as was done at Altoona?

A. Yes, sir.

Q. And Glen White?

A. Yes, sir.

Q. Did you get any lateral allowances for any of your collieries?

A. No, sir.

Q. Did you get any lateral allowance for the work done by the locomotive of drawing in the empties and drawing out the loaded cars on the Pennsylvania Railroad tracks?

A. No, sir.

Q. Do you, or do you not, know the length of the lateral railroads of your other collieries, the Bennington, Columbia No. 4, Columbia No. 6, Columbia No. 7, Columbia No. 8 and Hastings?

A. I could not give you that.

Q. Where is the Gallitzin colliery situated?

A. At Gallitzin, Cambria County.

Q. Where is the Hastings colliery situated?

A. Right near the town of Hastings, in Cambria County.

Q. Where is Columbia No. 4 situated?

A. On the Ben's Creek branch of the Pennsylvania Railroad.

Q. Where is Columbia No. 6 situated?

A. It is on the Evansville branch, a place called Nantiglow, Cambria County.

Q. Where is Columbia No. 7 situated?

A. On the Ben's Creek branch, Cambria County.

Q. Where is Columbia No. 8 situated?

A. That is on the South Fork branch of the Pennsylvania Railroad in Cambria County.

Q. Where is Bennington situated?

A. I do not know what branch you call that. It is on a little branch running from the main line of the Pennsylvania Railroad to the old State road. It is on a branch of the Pennsylvania Railroad. It is just east of the mountain in Blair County.

Q. Were all these mines in what is known as the Clearfield District?

A. Yes, sir. The Clearfield rate applied to them all.

Q. Where is the Altoona Coal and Coke Company's mine?

A. Their mine is about three miles from Kittanning Point on a branch of the Pennsylvania Railroad. The property adjoins the Gallitzin colliery.

Q. Is that a longer haul to eastern points than from your colliery?

A. The distance would be about the same as from Bennington colliery, but it is between two and three miles further than Gallitzin colliery nearer the eastern market. I am speaking of the mine.

Q. How does it compare with the Columbia collieries as to distance?

A. The Columbia collieries are twelve or fifteen miles further.

Q. How about the distance of the Glen White Coal Company's mines from the eastern market? Are they nearer or farther?

A. The Glen White is a little nearer than any other mine to the eastern market.

Q. Nearer than either the Altoona Company's mines or the Gallitzin?

A. Yes, sir. About a mile.

Q. How about the Millwood?

A. The Millwood is from forty to fifty miles further than the Gallitzin.

Q. How much farther from the eastern market is it than the farthest of your collieries?

A. Fifteen or twenty miles.

Q. How much further from the eastern market is the Latrobe than the Gallitzin colliery?

A. Fifty miles.

Q. How much further than the Hastings?

A. Twenty miles.

Q. How much farther than your farthest colliery?

A. The Hastings would be the farthest.

Q. How about the Bolivar?

A. Bolivar, I would judge, is about forty miles farther than Gallitzin.

Q. How much farther than your farthest colliery from the eastern market?

A. Ten or fifteen miles.

Q. As I understand it, all your collieries and the Altoona and Glen White collieries, are in the so-called Clearfield region?

A. Yes, sir.

Q. The Bolivar, Millwood and Latrobe are in the Latrobe region?

A. Yes, sir.

Q. The Latrobe region is to the west of the Clearfield region?

A. Yes, sir.

Q. Were the coal and coke freight rates the same to the eastern markets from the Clearfield region as from the Latrobe region?

A. The coal rate was the same. I think there is a difference of ten or fifteen cents in coke. There was at that time.

Q. But the railroad company made no difference in the coal freight from either Clearfield or Latrobe to the eastern market?

A. No. The same rate.

Q. Both regions had what is known as the "Clearfield rate"?

A. Yes, sir.

Q. Although the Latrobe was in some cases a haul of fifty miles longer than in your case?

A. Yes, sir.

Q. Did you get any lateral allowance at all from the Pennsylvania Railroad Company?

A. No, sir.

Q. Did you get any such allowance as was testified to here by Mr. Searles as was made to the Altoona Coal and Coke Company, the Latrobe Coal Company, the Millwood Coal Company, the Glen White Coal and Lumber Company and the Bolivar Coal and Coke Company?

A. No.

Q. You got some settlements of so-called rebates between the open rate, so-called, and the quoted rate?

A. Yes, sir.

Q. Did all other shippers get that?

A. I understood they did, yes, sir.

Q. Were any of these companies that received lateral allowances anything like the shipper, so far as volume or tonnage is concerned, that you were?

A. What do you mean?

Q. Did any of them ship nearly as much coal as you shipped?

A. Who? The people who got the laterals?

Q. Yes.

A. No, sir.

Q. You were a larger shipper than any of them, were you not?

A. Yes, sir.

Adjourned until Thursday, May 2d, 1907, at 11 a. m.

At request of counsel, meeting postponed until 3:30 p. m.

Thursday, May 2, 1907, 3.30 p. m.

Present:

HON. THEODORE F. JENKINS, Referee.

JOSEPH GILFILLAN, Esq., for Plaintiff.

FRANCIS I. GOWEN, Esq., for Defendant.

Mr. Gilfillan offered in evidence statement produced on call by the defendant, showing shipments of coal by the Glen White Coal and Lumber Company to points outside the State of Pennsylvania, from April, 1897, to May 1st, 1901.

Statement marked "Glen White Coal and Lumber Company, Interstate Coal, May 2nd, 1907, T. F. J."

Mr. Gilfillan also offered in evidence statement produced on call by the defendant, showing shipments of coke by the Glen White Coal and Lumber Company to points outside the State of Pennsylvania, from April, 1897, to May 1st, 1901.

Statement marked "Glen White Coal and Lumber Company, Interstate Coke, T. F. J., May 2nd, 1907."

Mr. Gilfillan also offered in evidence statement produced on call by the defendant, showing shipments of coal by the Millwood Coal and Coke Company to points outside the State of Pennsylvania, from April, 1897, to May 1st, 1901.

Statement marked "Millwood Coal and Coke Company Interstate Coal, T.F.J., May 2nd, 1907."

Defendant's counsel makes the same admission and objection with regard to the statements as to the Glen White and Millwood Companies as he did with reference to the statements relating to the Latrobe and Altoona Companies.

WILLIAM A. HAMILTON, having been duly sworn, was examined as follows:

By MR. GILFILLAN:

Q. What is your occupation?

A. Civil and mining engineer.

Q. Did you make a plan of the siding of the Latrobe Coal Company?

A. I did.

Q. About when did you make it?

A. About April 10th, 1907.

Q. I hand you a blue print plan, and ask you if that is the plan you made?

A. Yes, sir.

Q. Does that blue print plan contain an exact representation of the tracks of the siding of the Latrobe Coal Company?

A. It contains a general representation of the tracks.

Q. As to length?

A. As to length.

By THE REFEREE:

Q. Is it exact as to length?

A. It is exact as to length, but not as to position.

By MR. GILFILLAN:

Q. Can you tell me what the length of the siding of the Latrobe Coal Company, running from the Pennsylvania Railroad tracks to the tipple, is?

A. 2,640 feet.

Q. Is the grade on that map?

A. No, it is not.

Q. Do you know anything about the grade?

A. I haven't got the elevations as regards grade.

Q. Did you make a plan of the Bolivar Coal Company's siding?

A. I did.

Q. When did you make that?

A. April 9th, 1907.

Q. I hand you a blue print, and ask you if that blue print contains an exact representation of the length of the siding of the Bolivar Coal Company from the Pennsylvania Railroad tracks to the tipple?

A. It does.

Q. What is the length of the siding?

A. 1080 feet.

Q. Did you make a plan of the track of the Millwood Coal Company's siding?

A. I did.

Q. When did you make it?

A. April 9th, 1907.

Q. I hand you a blue print, and ask you if that blue print contains an exact representation of the length of the siding of the Millwood Coal Company, running from the Pennsylvania Railroad tracks to the tipple?

A. It does.

Q. What was the length of the siding?

A. 1964 feet.

Q. Was there beside that a narrow gauge?

A. Yes, sir.

Q. Have you the length of that?

A. About three and one-eighth miles.

Q. The mine is about three and one-eighth miles from the tipple?

A. From the tipple to the mine is about three miles.

Q. As to the other companies, is the mine right at the tipple, as to the Bolivar and Latrobe?

A. Yes, sir. The siding is just right at the tipple for standing cars above and below.

Q. When I used the word "tipple", I used the word "tipple" as being at the mine. The length of the tracks that you have given us is the entire length of each track at each mine, is it?

A. The length of track I have given is from the point of switch on the main line to the end of the straight track through, but that does not include the length of the sidings in. That is a straight line through.

Q. What is the general character of the country where the Millwood, Bolivar and Latrobe Coal Companies are situated, hilly or flat?

A. The country around there is hilly.

Q. How about where the mines are?

A. It is hilly where the mines are.

Q. How about the grade of the track?

A. The grade of the track is pretty flat at Bolivar and Millwood.

Q. How about Latrobe?

A. Latrobe is rather steep going in off the main line.

Q. Is it a down grade?

A. It is a down grade going in.

Q. You have no idea of the exact grade, have you?

A. No.

Q. Did you make a plan of the length of the siding

or tracks leading from the line of the Pennsylvania Railroad Company into the tipples or mines of the Columbia collieries 4, 6 and 7, the Hastings colliery, and the Ben's Creek?

A. I did of the Hastings.

J. G. SEARLES, recalled.

By MR. GILFILLAN :

Q. During the period of 1897, 1898, 1899, 1900 and 1901, what was the rate paid by the Altoona Coal and Coke Company on shipments from Kittanning Point to points west of Bellwood, and on the Hollidaysburg branch?

A. I could not answer that question without referring to my freight books.

Q. Will you please ascertain that?

A. I will do so.

Q. What were the rates paid by the Glen White Coal Company on shipments from Kittanning Point to points west of Bellwood and on Hollidaysburg branch?

A. I should make the same reply to that inquiry.

Q. The question applies to both coal and coke, both from Altoona Coal and Coke Company and the Glen White?

A. Yes, sir.

Q. And the fact as to whether on such shipments the Glen White got the fifteen cents lateral and the Altoona Coal and Coke Company the thirteen cents lateral.

A. I will ascertain.

Q. Who controlled the Columbia Coal Mining Company?

Objected to.

A. I do not know.

Q. Do you know that John Lloyd was a stockholder in it?

A. I do not know that positively, no.

Q. He did not ever tell you that?

A. I do not remember that he did. But I have always understood that he was.

Q. You know that the Columbia Coal Mining Company purchased coal from the Latrobe and Altoona coal companies, do you not?

A. No; I have no positive knowledge that they did.

Q. Did you ever make any settlements with the Columbia Coal Mining Company during 1897, '98, '99, 1900 and 1901?

A. Yes, sir.

Q. Between open and net rates?

A. Yes, sir.

Q. Monthly settlements?

A. Yes, sir.

Q. On coal that was purchased from those two companies?

A. I don't know about that. I could not say now.

Q. Would your books show it?

A. No; my books don't show it. I have no records as to where the shipments were from now.

Q. Whose books would show it?

A. I don't know of any books that would show it.

Q. Would the books of the Accounting Department show it?

A. I don't think so.

Q. Your books do show the monthly settlement between the open and net rates to the Columbia Coal Mining Company?

A. Yes, sir.

Q. During the period spoken of?

A. Any settlement that had been made during that period; yes, sir.

Q. On that coal on which you made settlements with the Columbia Coal Mining Company between the open

and net rates you also paid the Latrobe and Altoona Coal and Coke Companies the lateral?

A. I don't know whether they shipped any coal from there or not.

Q. Do you mean that there are no books in the railroad company's office showing that the Columbia Coal Mining Company purchased coal during those periods from the Altoona Coal and Coke Company and the Latrobe Coal Company?

A. In my office?

Q. Yes.

A. Absolutely none.

Q. Are there none in any of the other offices that you have seen?

A. Not that I know of.

Q. The Columbia Coal Mining Company was not a miner?

A. No, I don't think they were.

Q. It was not a mining company?

A. No, sir; not as I understand it. I always understood that they purchased coal from various mines.

Q. They purchased it principally from the mines that John Lloyd was interested in, did they not?

A. I don't know that.

J. L. MITCHELL, recalled.

By MR. GILFILLAN:

Q. Are you familiar with the lateral railroads or sidings, whichever they may be termed, of the Gallitzin colliery and of the Altoona Coal and Coke Company colliery and Glen White Coal Company colliery?

A. Yes, sir.

Q. Please tell the Referee about the grades of the sidings of those three collieries.

A. The Gallitzin siding is one and one-quarter per cent., I think, on an average.

By THE REFEREE:

Q. Is the grade in or out?

A. The grade is against the loaded car. That is, we have to haul the load up against the grade and the empties down.

By MR. GILFILLAN:

Q. About the Glen White and Altoona.

A. I think Glen White is about two per cent. in favor of the loaded car. That is, they push the empties up and the loadeds down.

Q. How about the Altoona?

A. Altoona is quite a heavy grade. It is pretty near three per cent. It is in favor of the load.

Q. Tell us about the installation of the locomotive at Gallitzin. When was it put on?

A. In October, 1899.

Q. It continued down to May 1st, 1901?

A. Yes, sir.

Q. Tell us the conditions under which you put it on.

A. When we first started there the Railroad Company did practically all the switching; we had to do a little with horses. In about 1898, I think, we increased our capacity a good deal; we built some ovens, and we couldn't get along with the amount of work the company did; they only came in once a day with empties and took out the loadeds, and we had to do a great deal of work with horses, and we shipped a good deal of coal, and between points west of Bellwood and Hollidaysburg Branch our neighbors had so much better rate by doing their own shifting; that is, it either cost them from a cent to a cent and a half a ton to do it with their own locomotive; and so I just bought a locomotive and did the same work, expecting, in fact trying, to compete.

Q. What did the Altoona Coal and Coke Company and the Glen White Coal and Lumber Company get for doing that shifting?

A. I suppose at that time it was ten cents a ton. Just before this suit was brought I found it was more.

Q. How much; do you know?

A. Eighteen cents on coal for the Altoona Coal and Coke Company, and twenty cents on coke, and Glen White was fifteen cents on each. My rate to Hollidaysburg was forty-five cents. My mine was probably three miles or four miles further from Hollidaysburg than the Altoona Coal & Coke Company, and with their locomotive and the difference in the other rate from Kittanning Point, they had nineteen cents; that is, I paid forty-five cents and they paid twenty-six cents, I think.

Q. Explain about that rate. You said Kittanning Point. From Kittanning Point to points west of Bellwood and on the Hollidaysburg branch, the freight rate was thirty-nine cents to the Altoona Coal and Coke Company and the Glen White Coal and Coke Company?

A. Yes, sir.

Q. And from Gallitzin and west of Bellwood and on the Hollidaysburg branch, the rate was forty-five cents?

A. Yes, sir.

Q. Then the Altoona Coal and Coke Company got thirteen cents lateral for doing the shifting, and the Glen White got fifteen cents lateral for doing the shifting?

A. Yes, sir.

Q. And you got nothing for doing the shifting at Gallitzin?

A. No, sir.

Q. Your mine was at Gallitzin?

A. Yes, sir.

Q. And Kittanning Point was the shipping point of the Glen White and Altoona?

A. Yes, sir.

Q. As I understand it, the haul from Gallitzin was a little farther than the haul from Kittanning Point?

A. Yes, sir.

Q. About how many miles?

A. It is about six miles; between five and six.

Q. What would the average cost per ton be for that haul?

A. I could not tell that.

Q. You put your locomotive on in October, 1899?

A. Yes, sir.

Q. October 1st?

A. Yes, sir.

Q. Did you do exactly the same service to the Pennsylvania Railroad that the Glen White and Altoona Coal Company did?

A. As far as I know, yes, sir.

Q. Did you not do it?

A. Yes, sir.

Q. You delivered the coal from the Gallitzin mine at the junction of the siding of the Gallitzin with the tracks of the Pennsylvania Railroad?

A. Yes, sir.

Q. Was not that exactly what the Glen White and the Altoona Coal and Coke Company did?

A. Yes, sir; the same thing.

Q. Have you made search for the manifests supplied by the Pennsylvania Railroad Company for the shipment of the coal mentioned in these statements put in evidence from the various collieries of the Mitchell Coal and Coke Company?

A. Yes, sir.

Q. Can you find them?

A. No, sir.

Q. Are they in existence?

A. I do not think they are. I think they were destroyed.

Cross-examination.

By MR. GOWEN:

Q. How long have you been in the coal business?

A. Since 1883.

Q. What companies other than the Mitchell Coal and Coke Company have you been connected with?

A. I ran a long time as J. L. Mitchell, and then the Gallitzin Coal and Coke Company.

Q. Were those the only companies?

A. No, sir. I was a stockholder in the Columbia Coal Mining Company.

Q. How about the Latrobe? Have you ever had any interest in the Latrobe?

A. No.

Q. Were you one of the original stockholders of the Columbia?

A. Yes, sir.

Q. You were in that company as a stockholder for how long?

A. Three or four years.

Q. During what period was that?

A. I think I sold my stock in 1899.

Q. When do you think you acquired it?

A. I was one of the charter members.

Q. It was organized some years before 1899?

A. Yes, sir.

Q. You were the president of the Mitchell Coal and Coke Company during the period covered by this action?

A. Yes, sir.

Q. Who were the other officers of the company during that period?

A. Charles Bergh was secretary and treasurer.

Q. Who was your superintendent?

A. William M. Smith.

Q. During all the period of the action?

A. Yes, sir.

Q. Who was your sales agent?

A. The Columbia Coal Mining Company was for a time.

Q. You sold to the Columbia, did you?

A. Yes, sir.

Q. For what period?

A. I think in 1897. I did not sell them much after 1897, or about 1898, probably.

Q. What portion of your output was sold to the Columbia Mining Company during that period?

A. I do not think more than fifteen per cent.

Q. Let us know, if you can.

A. I can tomorrow.

Q. Did the Mining Company represent you in any particular territory?

A. I guess I will have to go back to the start. The idea when we organized was that they were to handle Mr. Lloyd's coal and my coal and George Hopkins' coal.

Q. Was that idea carried out with reference to your coal?

A. It was for a time, and I do not know why, but I thought probably I could do better myself with it.

Q. You will be able to give us the date when the Columbia Coal Mining Company ceased handling your coal, will you not?

A. Yes, sir.

Q. Will you supply that data?

A. I will supply that date, yes, sir.

Q. During the period that the Columbia was selling your coal, what were the terms of the settlements between the Mitchell Company and the Columbia Company?

A. Settled monthly.

Q. Was the coal sold to the Columbia f. o. b. the mines?

A. Yes, sir.

Q. Settlements were made monthly?

A. Yes, sir.

Q. You have stated in your examination that you knew that all the shipments were made by the Mitchell Company which were embraced in the statements which have been filed in the case. Please tell us how that knowledge was derived?

A. I paid the freight on it all, or our customers did.

Q. The shipments were made from a large number of mines, were they not?

A. Yes, sir.

Q. You were not at the mines yourself, except at rare intervals?

A. Not all the time, no sir.

Q. You were there very seldom, were you not?

A. I put in a good deal of time at the mines.

Q. You were there, not for the purpose of seeing what was being shipped, but for the purpose of seeing how the operations generally were being conducted, were you not?

A. Yes, sir.

Q. You had nothing to do, of course, with the conduct of the office, of the mine superintendent, or of the mine manager, or whatever his title was, who had each day to make a record of shipments? You personally had nothing to do with that, did you?

A. Yes, sir; I did. I overseen that.

Q. What personally did you have to do with it?

A. What personally did I have to do with what?

Q. To seeing that records were made of shipments of each mine.

A. I gave a general supervision of the business we were doing. I was consulted every day with regard to it, and if orders came in, what mines they were to be sent to, and all that.

Q. Where were your headquarters at that time?

A. I was here in Philadelphia, and at Tyrone. I think part of the period I was at Tyrone, and latterly in Philadelphia.

Q. You spent most of your time here?

A. No, I cannot say that I did.

Q. The time was divided?

A. It was divided between here and the mines, yes.
sir.

Q. In May, 1901, you sold your interest to the Webster Coal and Coke Company, did you not?

A. Yes, sir.

Q. Just what character of transaction was that? What did you sell?

A. I sold all the property that I owned or had an interest in, except about 10,000 acres of coal land in Cambria County.

Q. What discount on accounts was made with the Webster Coal Company as the result of that sale?

A. I had all accounts, was to pay all debts and collect all moneys and give them the stock clear.

Q. You sold the stock of the Mitchell Company, did you?

A. I sold both. I gave a deed. It was sold both ways.

Q. You conveyed the mines, and also sold the stock of the Mitchell Company to the Webster Company, or people who were interested in it?

A. Yes, sir.

Q. You say that by that transaction you retained from the Mitchell Company all outstanding accounts due by that company and all outstanding claims of that company? Is that the case?

A. Yes, sir. I was to pay all claims against the company.

Q. Coming to the various methods of selling coal during this period, there was a portion of the coal which was sold f. o. b. the mines, was there not?

A. Yes, sir.

Q. During this period you were selling a considerable amount of coal to the Pennsylvania Railroad Company for its fuel supply, were you not?

A. Yes, sir.

Q. That coal was sold and delivered to the Pennsylvania Railroad Company at the mines?

A. Yes, sir.

Q. And was moved by it from the mines?

A. Except during the period at Gallitzin when I had the engine.

Q. But you paid no freight rate on it?

A. No, sir.

Q. And the price paid you for the coal was the regular region price which was established from time to time by the Pennsylvania Railroad Company?

A. Yes, sir.

Q. The region price being a price which was fixed for all coal delivered within certain regions?

A. Yes, sir.

Q. It also appears from the statements that you shipped some coal during the period of this action to other railroad companies; that was the case, was it not, to the Cumberland Valley?

A. I shipped to the Long Island and prepaid the freight on it, and I shipped coal to the Cumberland Valley?

Q. What was the rate on Long Island Coal?

A. I cannot say that.

Q. You know it was a special rate, do you not?

A. I do not know that. I am not positive.

Q. Do you not know, as a matter of fact, the rates on railroad supply coal were always lower than the rates on commercial coal?

A. I think they were.

Q. You think in the case of the Long Island Railroad Company you prepaid the freight, whatever it was?

A. Yes, sir.

Q. How about the Cumberland Valley?

A. That was sold at the mines. I did not prepay that.

Q. You did not pay it at any time, did you?

A. No, sir.

Q. The Cumberland Valley paid the freight, whatever it was?

A. The Cumberland Valley paid the freight.

Q. What other railroad companies were you shipping to at that time?

A. I do not think I shipped to any other. I am not positive.

Q. Please furnish us a statement showing all coal during the period covered by the action which was shipped to any railroad company, and the rate of freight on it, where you paid it, and a statement of all coal which you shipped which was sold delivered f. o. b. the mines.

A. I will do so.

Q. In answer to a question put you by Mr. Gilfillan, you testified: "I think in 1897 to probably April, 1898, we paid freight according to the tariff rates given." That is not a correct statement, is it?

A. No. I discovered it started a little earlier than that. I think in May, 1897, I got a small rebate, a couple of hundred dollars.

Q. Is it not a fact that during the entire period of this action you were not shipping coal at the tariff rates?

A. No; not the entire period. A good part of the period there was part of the coal and coke that was not shipped at the tariff rates, but it was the rate I understood that was given to about everybody, but they were not the tariff rates. It was not the published tariff rate.

Q. That is true of the period from April, 1897, to April, 1898, is it not?

A. Part of it. There were some rebates up to April, 1898; yes, sir.

Q. Beginning May, 1897?

A. I think May was the first.

Q. Do you really want to be understood as saying that all your shipments made in April, 1897, were made at the tariff rates?

A. No, sir; not all of them, but nearly all of them, the bulk of them. In this way: Say, for instance, I would get a rate to Pottstown, and I would sell Pottstown Iron Company, or somebody there, coal, and if I did not ship it from my own mines, if I bought it from Glen White, or anywhere else, I would put a claim in, and I would get that same rate as well as on coal I bought outside. I probably bought during this time eight to ten thousand tons a month right along, and it did not make any difference what mine it was from, the claim was put in and allowed just the same as on my own coal. That was coal that the Mitchell Coal and Coke Company had produced.

Q. What was your method in obtaining these rates from Mr. Searles?

A. For instance, in relation to coke, they probably fixed it maybe once a year. I went there and he would give me rates.

Q. During the period of this action there was very active competition, was there not, in the coal business as between the Pennsylvania Railroad shippers and shippers by other lines?

A. Yes, sir. Part of the period.

Q. You, or some other shipper by the Pennsylvania Railroad, desiring to secure some particular business, would go to Mr. Searles and would say to him, "We can get this business, we think, for your road, if you will give us a certain rate", and very often in that way the rates were secured, were they not?

A. It might be in some few cases, but if I was comparing not with other shippers, we all got about the same rate.

Q. Was it not the result of each shipper going to Mr. Searles in order to secure rates on which he hoped to be able to secure business?

A. In some cases it was.

Q. There was no general announcement by Mr. Searles, or any one connected with the railroad company, that during any period such and such rates would be quoted, was there?

A. No, sir. Take, for instance, I would go there and want a rate to Trenton. Mr. Searles would give me so and so, which would apply to everybody but Roebling's, or the Trenton Iron Company—I mean it would apply to anybody in that town. I suppose he had some arrangement with them.

Q. When Mr. Searles would give you the rate to Trenton, which you speak of, that rate would not be published or announced by the Pennsylvania Railroad Company in any way?

A. No.

Q. It was a rate for you to use?

A. For me to use, and other shippers all went there and got it.

Q. For other shippers who went there seeking a Trenton rate also?

A. Yes, sir.

Q. So that in every case in which these special rates were quoted, they were quoted to operators or shippers who would go to the Pennsylvania Railroad Company for the purpose of securing rates to particular points?

A. Yes, sir; and the first man that got it, he would make a price so that anybody else who went in there, or had a customer there, had to go and find out where the trouble was, and he would get fixed in the same way.

Q. If there had been any announcement by the Railroad Company of rates, for instance, which he had given you to enable you to secure business at Trenton, say, the very purpose of giving you that rate might have been defeated, because then some other railroad

company which reached Trenton would have made that rate, would it not?

A. I could not say about that. Yes, I suppose they would. The competition was hard enough at that time between the shippers on the Pennsylvania Railroad. The first one there got it, and as soon as one person had the rate, it was only a few days until everybody else had it, or else they didn't do any business there.

Q. During this period, were your freights paid weekly?

A. Yes, sir. For line shipments, the agent at Altoona scales used to draw on us every week.

Q. How as to shipments off the line?

A. All rail shipments I am speaking of, were about that way. For tidewater shipments, there was a draft on the agent at the shipping point. For tidewater business, there was usually a draft from the agent at the shipping point, either Greenwich or Amboy, and for rail shipments, there was usually a draft made by the agent of the Pennsylvania Railroad at Altoona scales.

Q. Were there weekly or monthly settlements during that period?

A. Weekly.

Q. Both as to line and tidewater?

A. Yes, sir.

Q. I think you have already testified that all your collieries were in the Clearfield region?

A. All carried the Clearfield rate, yes, sir.

Q. The Altoona and Glen White collieries were in the same region?

A. Yes, sir.

Q. The Millwood, Bolivar and Latrobe operations were in the Latrobe region?

A. Yes, sir.

Q. You testified that there was a difference in the coke rates from the two regions during the period covered by the action, and you said that you thought that

difference was fifteen cents a ton. Was it not, in point of fact, twenty cents.

A. When I first went into business, it was twenty cents, and I think it was reduced to fifteen cents.

Q. Please look that up and let me know.

A. Yes, sir. I know originally it was twenty cents. Coal is the same.

Q. Look into the matter and see whether up to April 1st, 1899, the rates on coal from the Latrobe region to all points, both State and interstate, excepting New York State points, reached via the Northern Central Railroad Company, were not fifteen cents a ton higher than the Clearfield rates.

A. I will look it up.

Q. Please ascertain whether between April 1st, 1899, and December 3rd, 1900, all rates to points within the State from the Latrobe region were not fifteen cents a ton higher than from the Clearfield region.

A. I will do so.

Q. Also whether subsequent to December 3rd, 1900, the rates on coal from the Latrobe region to points within the State west of Philadelphia and Erie and Northern Central lines between Williamsport and Baltimore were not fifteen cents a ton higher from the Latrobe than from the Clearfield region, and whether that condition did not continue down through the period covered by the action.

A. I will look it up.

Q. There never has been the same rate, has there, from the Latrobe and Clearfield regions to points west of Lewistown Junction?

A. I judge not, no, sir.

Q. They have always been figured generally on the mileage basis, have they not?

A. I think so.

Q. I think you stated that you commenced to operate the Gallitzin branch with your own locomotive on October 1st, 1899?

A. Yes, sir.

Q. You had, however, been in communication with the officers of the Railroad Company, had you not, for about a year previous to that, endeavoring to make arrangements which would secure for you payment if you operated that branch yourself?

A. Yes, sir.

Q. I understand that the reason you wanted to do that was because your competitors you thought were getting an advantage because they were doing that and being paid for it?

A. Yes, sir; and to help ourselves, too. That is, the way the Railroad Company operated it, they would come in there with two or three engines and spend anywhere from two to four hours, and we would lose an hour or two that we couldn't hoist coal. Everybody was idle.

Q. You say at that time you thought those laterals were ten cents a ton?

A. Yes, sir.

Q. What payment did you want the Railroad Company to make you?

A. I first wanted ten cents a ton, and then I offered to do it for less. I was willing to take what I could get.

Q. Look at those letters and see whether those are letters written by you on the subject. (Letters handed witness.)

A. Yes, sir; they are.

The following letters shown witness, and identified by him as letters written by his company.

Letter of September 7, 1898, to F. L. Shepherd, General Superintendent, Pennsylvania Railroad Company.

Letter of May 23rd, 1899, to J. M. Wallis, General Superintendent, Pennsylvania Railroad Company.

Letter of July 22nd, 1899, to John M. Wallis, General Superintendent, Pennsylvania Railroad Company.

Letter of November 20th, 1899, to J. M. Wallis, General Superintendent, Pennsylvania Railroad Company.

Letter of November 23d, 1899, to J. M. Wallis, General Superintendent, Pennsylvania Railroad Company.

Letter of February 7th, 1900, to J. M. Wallis, General Superintendent of Pennsylvania Railroad Company.

Letter of April 20, 1900, to J. M. Wallis, General Superintendent of Pennsylvania Railroad Company.

Letter of May 8th, 1900, to J. M. Wallis, General Superintendent of Pennsylvania Railroad Company.

Q. Whom did you have any communication with representing the Pennsylvania Railroad Company in relation to the payment to be made to you for the service of operating your branch other than Mr. Wallis and Mr. Shepherd?

A. I don't think anybody else.

Q. When was the request for the ten cent payment made?

A. I talked to Mr. Shepherd about it. Not in writing.

Q. You never made any proposition?

A. Never in writing.

Q. Can you tell us about when it was you made that request?

A. No, I could not tell you the dates. I had it up with him and with Mr. Wallis for years.

Q. Was it while Mr. Shepherd was at Altoona?

A. Yes, sir.

Q. I show you a tracing of the present tracks and mining plant at Gallitzin, and ask you to say, during

the period that the railroad company was delivering the empties to you and taking the loads away, what service they actually rendered. Where did they deliver the empty cars, and where did they take the loads from?

A. They drew their empty cars from the main line into the end of the siding next to the main line.

Q. Where was it with reference to station zero on this plan?

A. Right near station zero.

Q. They delivered the empties at that point to you, did they?

A. Yes, sir. They would be put in there during the night probably, and say at noon next day they would come in and shove the empty cars on the empty coal and coke siding just opposite twenty-five, the coke ovens, as marked on this tracing.

Q. Where would they take the loaded cars from?

A. They would load them up on these tracks between station 40 and 50. Here were coke ovens and down along here, and here was another block of ovens down about between station 40 and 50. They would run in through below the tipple, and make up their train. The loaded cars would run down here, the grade is down from the railroad. (Pointing on plan.)

Q. During the period that the railroad company was performing this service, you also moved cars from point to point by horses, did you not?

A. Yes, sir. Some days there would not be any empty cars when the railroad company's locomotive would come, and then they would take out our loaded cars, and then probably an hour or two after they had gone there would be empty cars thrown in there, and we would have to do all that shifting with horses, because they would not be in until the next day at noon.

Q. After you started the operation of the branch with your own locomotive, you, of course, dispensed with the horses?

A. Yes, sir.

Q. And performed all services with the locomotive which you had theretofore performed with your horses?

A. Yes, sir.

Q. You suspended for a while the operation of that branch, did you not, for a few weeks?

A. Yes, sir; I sold the one locomotive, and it was probably four weeks before we got another, and then, during that time, the Pennsylvania Railroad Company did the service, and with our horses.

Q. As it was done before?

A. Yes, sir.

Q. Please give us those weeks.

A. I will look it up.

Q. Tell us what the maximum gradient of the Altoona branch is?

A. I think it is about three per cent.

Q. That is only your estimate from looking at it? You have never actually had any survey made?

A. No, sir. I think I have seen a map some time that showed it.

Q. It is a switchback road, is it not?

A. A switchback, yes, sir.

Q. Do you know what the grade of the Glen White branch is?

A. It is over two per cent., I think. It is in favor of the loaded cars.

Q. That is, of course, merely an estimate?

A. It is only an estimate.

Q. Are you at all familiar with operating the Millwood branch?

A. I have been there once or twice.

Q. It is a narrow gauge road, is it not?

A. It is a narrow gauge road; yes, sir.

Q. Was this the method during the period covered by the action, that the coal would first be dumped from the mine cars into the narrow gauge railroad cars,

would be put over the branch to a tipple at the junction of the narrow gauge branch with the Pennsylvania Railroad, and the coal would be put over the tipple and loaded into the Pennsylvania Railroad cars?

A. That is right, yes, sir.

Q. Do you know what the grade of that branch was?

A. I do not know, but I would judge it was pretty flat.

WILLIAM A. HAMILTON, recalled.

By MR. GILFILLAN :

Q. Have you the blue prints showing the lengths of the siding or tracks of the Columbia collieries?

A. I have the blue print showing the tracks, plant, mine and tipple of the Ben's Creek Mitchell Coal and Coke Company.

Q. Is that a correct representation of the tracks from the railroad junction to the mine at Ben's Creek?

A. Yes, sir.

Q. How long are those tracks?

A. 1406 feet. I have a blue print marked Pennsylvania Beach Creek and Eastern Coal Company Colliery No. 1.

Q. Is that a correct representation of the length of the tracks from the Pennsylvania Railroad to the mines?

A. It is.

Q. What is the length?

A. 1144 feet.

Q. (Witness shown blue print of Hastings Colliery). Is that a correct representation of the length of the track from the junction of the railroad to the mine?

A. Yes, sir.

Q. What is the length of the tracks?

A. 2595 feet.

Q. (Tracing Bennington mine shown witness.) Is that a correct representation of the length of the tracks from the junction of the railroad to the mine of the Bennington colliery?

A. Yes, sir.

Q. What is the length of the tracks?

A. 2700 feet.

J. L. MITCHELL, recalled.

By MR. GILFILLAN:

Q. I show you blue print Pennsylvania Beach Creek and Eastern Coal Company Colliery No. 1. What colliery was that during the period of the action?

A. Columbia No. 4.

Q. And those tracks that appear on this blue print are the tracks that were there at Columbia No. 4 during the period of the action?

A. Yes, sir.

Q. I show you blue print entitled plan of tracks for new tipple at Bens Creek, and ask you what colliery that was during the period of the action?

A. Columbia No. 7.

Q. Those tracks that are represented on this blue print were the tracks that were there during the period of the action at Columbia No. 7?

A. Yes, sir.

By MR. GOWEN:

Q. At the time the railroad suspended operation at your branch, that suspension was consequent upon your request that they should do so, because you wanted to operate it yourself?

A. They would not allow me anything. And another reason, my engine was a little too light; it took too long to do the work, and I sold that engine and got another.

Q. I am not referring to the time when you temporarily suspended, and the railroad resumed operations of a few weeks, but I am speaking of the time when the railroad company suspended operations on your branch, and you commenced them in 1899 when you put on the locomotive. The railroad ceased operating your branch, delivering cars there and taking them out at your request, because you wanted to do the service yourself.

A. Yes, sir; I was doing the service myself.

Q. They ceased doing what service they had been performing before that time at your request?

A. Yes, sir.

Q. You never requested them to resume operations, preferring to continue it yourself?

A. The second time I found they could not do it and I had to do it myself.

Q. When you say you found they could not do it, you mean the service was not as satisfactory as performed by yourself?

A. It was not satisfactory; I had to use horses so much.

Q. The service to be performed by the railroad company there was exactly similar to that which they were performing at other operations, except that you had a larger volume of business to handle?

A. Except Glen White and the other places, and my business was larger.

By MR. GILFILLAN:

Q. The service they were performing there was not the same service they were performing at Glen White and Altoona Coal and Coke Company?

A. They did not perform any service there.

By MR. GOWEN:

Q. The service that the railroad company was performing for you at Gallitzin was of the same general character that they were performing at other opera-

tions except those at which the operators were performing the services themselves?

A. Yes, sir.

Q. You desired to put yourself in a condition to do exactly the same service for the railroad that the Glen White and Altoona Coal Company were doing, and to get the same lateral allowance they were getting?

A. I tried to get that for a long time, and I found I could not get that, and I was willing to take less.

By MR. GILFILLAN:

Q. You had to take anything you could get in those days, had you not?

A. It was a good deal that way; yes, sir.

Q. (Blue print shown witness entitled "Print showing Beaver Dale siding.") Is that the colliery that was known as Columbia No. 8 during the period of the action?

A. Yes, sir.

Q. Are the tracks from the railroad junction to the mine on this plan the same as they were at Columbia colliery No. 8 during the period of the action, length 1575 feet?

A. Yes, sir.

Q. (Plan shown witness, entitled "Pennsylvania Coal and Coke Company, showing siding at Nanty-Glo".) Is that the same colliery as colliery Columbia No. 6 during the period of the action?

A. Yes, sir.

Q. Are the tracks shown on this blueprint the same as existed at Columbia No. 6 during the period of the action?

A. Yes, sir; the length of the siding 2725 feet.

Mr. Gilfillan offered in evidence statement produced on call by defendant, of shipments of coke by the Bolivar Coal and Coke Company to points outside the State of Pennsylvania, from April, 1897, to May 1st, 1901.

Statement marked "Bolivar Coal and Coke Company Interstate Coke, T. F. J., May 2nd, 1907."

Defendant stipulates that this statement may be regarded as showing shipments of some tonnage of coke to each of the places mentioned in the statement on the date named therein.

Adjourned until Tuesday, May 7, at 3:30 p. m.

Thursday, May 16, 1907, 3:30 p. m.

Present:

HON. THEODORE F. JENKINS, Referee.

JOSEPH GILFILLAN, Esq., for Plaintiff.

FRANCIS I. GOWEN, Esq., for Defendant.

WALTER W. WOOD, having been duly sworn, was examined as follows:

By MR. GILFILLAN:

Q. Where do you live?

A. In Altoona, Pennsylvania.

Q. What is your occupation?

A. I am connected with the Altoona Coal and Coke Company.

Q. In what capacity?

A. I am secretary and clerk.

Q. Are you treasurer?

A. No, sir.

Q. Where is the office of the Altoona Coal and Coke Company?

A. In the First National Bank Building, Altoona.

Q. Who are the officers of the Altoona Coal and Coke Company?

A. John Lloyd is President, John Lloyd, Jr., is Treasurer, myself Secretary, and C. C. Renshaw, Manager.

Q. Were you subpoenaed to bring certain books and papers of the Altoona Coal and Coke Company?

A. I was; yes, sir.

Q. Have you got a memorandum of the subpoena?

A. Yes, sir.

Q. Did you bring any of those books and papers with you?

A. Yes, sir.

Q. What books did you bring?

A. I brought the shipping books. They are here in an office in town, in the Arcade Building. I also brought the stock register book and minute book.

Q. That is of the Altoona Coal and Coke Company?

A. Yes, sir.

Q. Did you bring any of the books of the Latrobe Company?

A. I did not; no, sir.

Q. Are they under your possession or control?

A. No, sir; they are not.

Q. How about the Columbia Coal Mining Company?

A. I haven't anything to do with those either.

Q. Did you prepare certain statements for the Pennsylvania Railroad Company showing the shipments of coal and coke by the Altoona Coal and Coke Company during the years 1897, 1898, 1899, 1900 and 1901?

A. I think those are the dates for which I prepared some statements.

Witness handed statement identified and marked "Altoona Coal and Coke Company, State Coal, T. F. J., April 30th, 1907", and is asked to look at that statement and state whether that shows the shipments of coal during the years 1897,

1898, 1899, 1900 and 1901 to points within the State of Pennsylvania.

A. It looks like the statement we prepared as far as I can see. Some of the names are not just exactly as we have them, but I suppose the intention is all there. Yes, that seems like the statement we prepared.

Q. I show you a statement marked "Altoona Coal and Coke Company, Interstate Coal, T. F. J., April 30th, 1907". Run your eye through that and state whether that is a statement of the shipments made during the periods therein mentioned outside the State?

A. Yes, sir. I recognize those consignees and destinations.

Q. I show you a statement marked, "Altoona Coal and Coke Company, State Coke, T. F. J., April 30th, 1907", and ask you whether that shows the shipments of coke within the State?

A. Yes, sir. Those names look familiar.

Q. Those are the shipments of coke?

A. Yes, sir.

Q. I show you statement marked, "Altoona Coal and Coke Company, Interstate Coke, T. F. J., April 30th, 1907", and ask you whether that shows the coke shipped to points outside the State?

A. Yes, sir; that is correct.

Q. The statements which you prepared for the Pennsylvania Railroad Company showing the shipments of coal and coke both in the State and interstate were taken from your books?

A. They were; yes, sir.

Q. And you shipped the number of tons of coal and coke and to the destinations therein stated in those statements during that period?

A. We did.

Q. And at the times mentioned in those statements?

A. Yes, sir.

Q. You say you have the stock register. Can you

give the number of shares of stock that John Lloyd owns in that company?

Mr. Gowen requested Mr. Gilfillan to state the purpose of the question.

MR. GILFILLAN: I propose to show that John Lloyd was the largest stockholder in the company. Then I propose to follow that up by showing that he was a very large stockholder of the Columbia Coal Mining Company, and to show that it was because of his position in those companies that these allowances were made, and that that was the basis of the allowances, and not any geographical or business reason existing between the Pennsylvania Railroad Company and the various companies.

Objected to. Objection overruled. Exception noted for defendant.

A. I would not like to give you that from memory. I really do not remember. I will send for the stock ledger.

Q. Have you the stock transfer book of the Altoona Coal and Coke Company before you?

A. (Producing book.) Yes, sir. We call it the stock register book.

Q. Does that book show the number of shares held by the various stockholders during the period of this action, 1897, 1898, 1899, 1900 and 1901?

A. It does.

Q. Is this a complete list of the stockholders?

A. Yes, sir.

Q. Refreshing your memory with that book, give us the number of shares held by the stockholders during the period of the action.

Objected to. Objection overruled. Exception noted for defendant.

A. The capital stock of the company was 24,999 shares issued.

Q. That is the total capital issued and outstanding?

A. Within one share. There is one share not issued.

Q. What number of shares did Mr. John Lloyd hold during the years, 1897, 1898, 1899, 1900 and 1901?

A. Is that from the inception of the company up to 1901?

Q. From the first of January, 1897, to the end of December, 1901.

A. The stock held in Mr. Lloyd's name up to this period from the inception of the company was 6,246 shares.

Q. That is down to December 31st, 1901?

A. Yes, sir.

Q. What were the names of the other stockholders during the period of the action, and what number of shares did they hold?

Objected to on the ground that the question is not relevant.

Objection sustained. Exception noted for plaintiff.

Q. What other books did you say you brought down?

A. The shipping books which show the shipments of the coal and coke as shown in these statements.

Q. And the transfer book?

A. Yes, sir.

Q. Which is the only book which has any record of the stock holdings?

A. With the exception of the certificate book, of course, the stubs of the certificates.

Q. Do you know John Lloyd?

A. I do.

Q. Have you seen him recently?

A. No, sir.

Q. When was the last time you saw him?

A. Some time in February. I am not just sure of the date.

Q. You have not seen him since February of this year?

A. I have not.

Q. Have you talked with him since February of this year?

A. I talked to him twice over the phone.

Q. Where?

A. I talked to him at Philadelphia and once at his home in Sunbrook from our office.

Q. When did you talk to him at Sunbrook?

A. Some three or four days ago. I cannot just locate the date.

Q. Where is Sunbrook?

A. It is his summer home, between Hollidaysburg and Altoona. In fact, it is his home.

Cross-examination.

By MR. GOWEN:

Q. I think you said in answer to a question of Mr. Gilfillan that the statements which had been shown to you here today showed the shipments which had been made by your company?

A. Yes, sir.

Q. How did you derive knowledge as to the shipments which were made and as to the quantity?

A. We went over our shipping books.

Q. What are your duties in connection with the Altoona Coal and Coke Company?

A. I am bookkeeper.

Q. How do you get reports of shipments made?

A. We have a daily report sent from our shipping clerk at the mines, which we enter in our shipping record in our office.

Q. That is the only knowledge you have of the shipments made?

A. That is the only knowledge; yes, sir.

Re-direct-examination.

By MR. GILFILLAN :

Q. You also get the report of the weights from the railroad Company, do you not?

A. Yes, sir. That is our check on it.

Q. You check it up to see whether they correspond?

A. Yes, sir.

Q. You have not any doubt that that coal was shipped, have you?

A. I have none in the world; no, sir.

JOHN C. RENSHAW, having been duly sworn, was examined as follows.

By MR. GILFILLAN :

Q. Where do you live?

A. Broad Avenue and Twenty-second Street, Altoona.

Q. What is your occupation?

A. I am manager of the Altoona Coal and Coke Company.

Q. How long have you been manager?

A. Since 1902.

Q. Were you with the Altoona Coal and Coke Company prior to 1902?

A. Yes, sir.

Q. In what capacity?

A. As a clerk.

Q. How long had you been in that capacity as clerk?

A. Two to three years, since 1899—from 1899 to 1902.

Q. Were you with the Altoona Coal and Coke Company prior to 1899?

A. No, sir.

Q. Do you know John Lloyd?

A. Yes, sir.

Q. Have you seen him recently?

A. Yes, sir.

Q. When?

A. Wednesday week.

Q. Where?

A. At Sunbrook.

Q. That is his home outside of Altoona?

A. Yes, sir; his summer residence.

Q. Was he in bed?

A. He was not that day; no.

Q. Have you seen him at the office?

A. He has not been at the office.

Q. Have you seen him out on the street?

A. He has not been on the street.

Q. How many times have you seen him in the last two months?

A. A week or ten days or two weeks ago, when this case was called to trial, I was here for ten days, and I was here every day, and he was in bed at the Bellevue-Stratford. He was in bed at the time.

Q. Every time you saw him?

A. No; he was in the room for an hour or so during the day he was dressed, and the balance of the time he was in bed.

Q. How often do you say you have seen him since the date set for the trial of the case?

A. Twice.

Q. Both times at Sunbrook?

A. No. Once when he came up on the train. I was at the station when he came, and once at his home.

Q. Have you in your possession or under your control, any of the books of the Altoona Coal and Coke Company except the shipping books and stock transfer book and certificate book?

A. The certificate book and transfer book I do not consider as being under my control. I think Mr. Wood

is the immediate custodian of those. The balance of the books are more or less under my supervision.

Q. What constitutes the balance of the books outside of the shipping book?

A. The general ledgers, the books of entry.

Q. They contain the record of the shipments?

A. Yes, sir.

Q. Do you know anything about the Columbia Coal Mining Company?

A. Only as their selling representative in the East. That is all.

Q. The Altoona Coal Company sells some of its coal to the Columbia Coal Mining Company?

A. Yes, sir.

Q. Do you know whether John Lloyd is a large stockholder of the Columbia Coal Mining Company?

A. I do not.

Q. Did you ever see their books?

A. Never.

Q. Who has the Columbia Coal Mining Company's books?

A. I do not know.

Q. Where is their office?

A. In Philadelphia.

Q. Whereabouts?

A. In the Arcade Building.

Q. Which Arcade?

A. The P. R. R. Arcade, 15th and Market.

Q. Which floor?

A. The first floor, room 113.

Q. Do you know who are the officers of that company?

A. John Lloyd is President, I know that, but I do not know any one else except C. A. Buch, the Manager.

Q. During the years 1897, 1898, 1899, 1900 and 1901, the Altoona Coal and Coke Company sold a great deal of its coal and coke to the Columbia Coal Mining Company, did it not?

A. I can only speak from what I know. From 1899 to 1902, that is, to December, 1901, I would say that the majority of the coke was sold to the Columbia Coal Mining Company, possibly ninety per cent. of the coke was sold for their account, but the percentage of coal during that period was not more than, if it was as high as five per cent. of our output. I doubt that very much. About ninety per cent. of the coke was sold through the Columbia.

Q. You think only about five per cent. of the coal during that time?

A. Very little. Possibly five per cent. I say five per cent. because we may have sold five per cent.

Q. The other ninety-five per cent. you think were sold direct by the Altoona Coal and Coke Company?

A. Yes, sir. You must understand the coal that was sold to Columbia was sold direct, too.

Q. The other ninety-five per cent. of the coal was not sold to the Columbia Coal Mining Company during the period you mentioned, or through the Columbia Coal Mining Company?

A. No; that is correct. I cannot recall the tonnage. It is in the neighborhood of that.

Cross-examination.

By MR. GOWEN:

Q. In the case of the coal that you sold to the Columbia Coal Mining Company or through the Columbia Coal Mining Company, and also in the case of coke that was sold to or through that company, was the sale made f. o. b. the mines?

A. The sale was made f. o. b. mines; yes, sir.

Re-direct-examination.

By MR. GILFILLAN:

Q. How about the coal or coke that was not sold through the Columbia Coal Mining Company or to the Columbia Coal Mining Company; how was that sold?

A. Do you mean the other coal, the coal not going to Columbia?

Q. Yes.

A. It would be very hard to give the exact proportions. Some was sold f. o. b. the mines, and some delivered.

Q. What you mean by f. o. b. is, sold f. o. b. at the mines?

A. Yes, sir.

Q. What you mean by delivered is, it was sold to the consignee at the point of destination?

A. That is correct, with the freight prepaid.

Q. In all cases?

A. No.

Q. That does not follow?

A. Not entirely.

Q. There are some both ways?

A. Yes, sir.

Q. Can you tell how the coal and coke was sold that was sold to consignees on the Hollidaysburg branch of the Pennsylvania Railroad?

A. It depends entirely upon the consignee.

Q. Some was sold f. o. b. the mines and some to be delivered?

A. Yes, sir. Some sold f. o. b. and some sold at a delivered price.

Q. You cannot tell the proportion?

A. No, sir. I would say the larger proportion is sold f. o. b. price at delivery point on the Hollidaysburg branch, or Altoona points, sold to steam consumers.

Q. You say the great proportion was sold delivered?

A. At a delivered price; yes, sir.

Q. There was considerable, I suppose, sold f. o. b. the mines delivered at these points?

A. Yes, sir.

Q. F. o. b. the mines, of course the consignee paid the freight?

A. Yes, sir. All coal is sold f. o. b. mines, and coke is, too, f. o. b. ovens, but, if a consignee asks us to pay the freight, we just add the freight to it. That is taken from the tariff sheets.

Q. According to the contract with the consignee, all the coal and coke is sold f. o. b. the mines or f. o. b. the ovens?

A. F. o. b. the mines or f. o. b. the ovens.

Q. And if the consignee asks you to pay the freight, you pay it for him, but you add it on?

A. According to the tariff sheet exactly.

WALTER W. WOOD, recalled.

By MR. GILFILLAN:

Q. Referring to the lists which you examined, showing the shipments by the Altoona Coal and Coke Company of coal and coke both within and without the State and the points of destination and the time of delivery, did the Altoona Coal and Coke Company pay the Pennsylvania Railroad Company freight on that coal, or was freight paid on the coal?

A. Freight was paid on the coal; yes, sir.

Q. You are the Secretary of the Company?

A. Yes, sir.

Q. What was the lateral allowance made to the company on coal and coke on points east of Bellwood?

A. Up to a certain time, I cannot just fix the time, I think it was 1899; I am not just sure about that, but I believe we got eighteen cents east of Bellwood on coal, 2240 pounds, and twenty cents on 2000 pounds of coke.

Q. Are you correct about the dates? Was it not January 1st, 1902, that it ceased?

A. I think that is it. I am not sure about that either. I cannot say. I think that is correct.

Q. January 1st, 1902?

A. Yes, sir.

Q. What was the allowance on shipments to the Altoona points on the Hollidaysburg branch?

A. We did not have any coke to amount to anything; I do not think we had any, but on the Hollidaysburg branch it was thirteen cents on 2240 pounds of coal.

Cross-examination.

By MR. GOWEN:

Q. In case of coal that was sold by the Altoona Coal and Coke Company, or of coke as well that was sold f. o. b. the mines, where the consignee paid the freight, no credit was given the consignee for the twenty cents or the eighteen cents or the thirteen cents, whichever it was you got?

A. No, sir.

Q. That was retained by the Altoona Coal and Coke Company?

A. That was retained in our treasury.

Adjourned until Tuesday, May 21, 1907, at 3:30 p. m.

Tuesday, May 21, 1907, 3:30 p. m.

Present:

HON. THEODORE F. JENKINS, Referee.

JOSEPH GILFILLAN, Esq., for Plaintiff.

FRANCIS I. GOWEN, Esq., for Defendant.

CHARLES A. BUCH, having been duly sworn, was examined as follows:

By MR. GILFILLAN:

Q. Where do you live?

A. At Wayne, Pennsylvania.

Q. What is your occupation?

A. Manager of the Columbia Coal Mining Company.

Q. How long have you been in that position?

A. Since February, 1902.

Q. Where were you employed prior to that?

A. I was with the Pennsylvania Railroad Company, and a street car company and electric light company of Altoona.

Q. Was 1902 your first connection with the Columbia Coal Mining Company?

A. Yes, sir.

Q. You have been manager of that company since 1902?

A. Yes, sir.

Q. Were you served with a subpoena to produce some books and papers?

A. Yes, sir.

Q. Have you the notice with you?

A. Yes, sir. (Notice produced.)

Q. Did you bring any of the books of the Columbia Coal Mining Company with you?

A. Yes, sir. Mr. Keen has them.

Q. What books did you bring?

A. We brought, I think, the ledger, the journal, and I do not just know what, there are two of them there. I think we brought the ledger and journal and cash book.

Q. Have you the book showing the settlements made between the Pennsylvania Railroad Company and the Columbia Coal Mining Company on coal purchased by it and shipped over the lines of the Pennsylvania Railroad between April 1st, 1897, and May 1st, 1901?

A. I have not, unless it is in those books that I have with me here. I do not know of any book of that character, if there was anything of that kind, unless it would be in the ledger or journal.

Q. Have you not any book showing the rebates or settlements that were paid by the Pennsylvania Railroad during that period on coal handled by the Columbia Coal Mining Company?

A. I don't know that I have. I do not know of any settlements for rebates, but if there were any, I presume they would show in this book.

Q. How long has Mr. Keen been with the company?

A. I think he was in the service a year longer than I.

Q. What is Mr. Keen's position?

A. He is bookkeeper.

Q. Have you brought the stock certificate book of the Columbia Coal Mining Company or the stock ledger?

A. I think we have it here.

Q. Have you the books of the Latrobe Coal Company?

A. We have got, I think, the ledger and journal of the Latrobe Coal Company. I do not think we have got the minute book, because we haven't got it.

Q. Do you know in what book the settlements with the Pennsylvania Railroad are entered from 1897 to 1901 of rebates allowed on the shipments of coal?

A. I don't know, unless they would be in the ledger of the Latrobe Coal Company.

Q. Is Mr. Keen the bookkeeper of the Latrobe Coal Company, too?

A. Yes, sir.

Q. Where is the office of the Columbia Coal Mining Company?

A. 113 Arcade Building, Philadelphia.

Q. Has the Latrobe Coal Company the same office?

A. We have one office at Altoona and one here.

Q. Have you the stock certificate book or stock ledger of the Latrobe Coal Company?

A. We have it if it is kept in our office. I don't

know whether it is kept in our office. Mr. Keen can answer you that.

Q. Is John Lloyd a stockholder in the Columbia Coal Mining Company?

A. Yes, sir.

Q. What number of shares does he hold?

A. I do not know that. The books will show.

Q. Is John Lloyd a stockholder of the Latrobe Coal Company?

A. Yes, sir.

Q. Do you know the number of shares he holds in that company?

A. No; I do not.

Q. Please refer to the stock transfer book, or stock ledger of the Latrobe Coal Company.

A. The Latrobe stock book is not kept in our office. That is kept in Altoona.

Q. Who has control of it in Altoona?

A. I guess Mr. Lloyd has, as treasurer.

Q. John Lloyd, Junior?

A. No; John Lloyd, Senior.

Q. Is he treasurer of the Latrobe?

A. Yes, sir.

Q. You say you think it is kept in Altoona?

A. Yes, sir.

(Witness produced stock certificate book of the Columbia Coal Mining Company.)

Q. Can you tell from that book what number of shares John Lloyd held between April, 1897, and May 1st, 1901, in the Columbia Coal Mining Company?

Objected to by Mr. Gowen on the ground that the extent of Mr. Lloyd's ownership of the stock referred to is irrelevant.

Objection overruled. Exception noted for defendant.

A. I cannot tell you.

Q. Have you not any other book than that?

A. This is the only book that I know of.

Q. This is not the only stock book you have, is it?

A. As far as my knowledge goes, that is the only book we have.

Q. You know this book begins January 2nd, 1906, do you not?

A. I noticed that.

Q. When was the Columbia Coal Mining Company organized?

A. I cannot tell you.

Q. It was running when you went with it in 1902, was it not?

A. Yes, sir.

Q. Have you never seen any certificates of stock?

A. I have not.

Q. No other book but this?

A. That is the only book I know of.

Q. Have you got no stock ledger?

A. I do not know.

Q. Did you look?

A. I have not got charge of those books.

Q. Who has?

A. Mr. Keen has. It is not in my department at all. I don't know anything at all about it.

Q. What department is yours?

A. The sales department.

Q. Did you have any conference with any of the officers or agents of the Pennsylvania Railroad Company with regard to rebates on shipments of coal?

A. No.

Q. Who attended to that part for your company?

A. I do not know. I do not know anything about any rebates since I came with the company, and I don't know about any previous, if there were any. All I know is I heard the subject coming up that there were rebates and all that, but I have never seen anything,

and I don't know anything about it. I have never had any conversation with any person about it.

Q. Have you never seen anything on the book with reference to the payment of rebates to the Columbia Coal Mining Company?

A. No, sir.

Q. During the period 1897, 1898, 1899, 1900 and 1901?

A. No, sir.

Q. Who would make any entries on that subject if there were rebates paid?

A. If there were any, Mr. Keen from the time he came with the company, and I don't know who was bookkeeper before. I presume the bookkeeper would make the entries.

Further examination of the witness suspended.

CHARLES B. KEEN, having been duly sworn, was examined as follows:

By MR. GILFILLAN:

Q. Where do you live?

A. 1547 North Franklin Street.

Q. What is your occupation?

A. Bookkeeper.

Q. Bookkeeper where?

A. At the Columbia Mining Company at the present time.

Q. How long have you been employed there?

A. Since July, 1900.

Q. Who was the bookkeeper preceding you?

A. I think his name was Bert Tfingerer.

Q. Do you know where he lives?

A. I do not. Up the State somewhere.

Q. Have you any records in the books which you have brought with you showing the payment of rebates

by the Pennsylvania Railroad to the Columbia Coal Mining Company?

A. No; I do not know anything about any rebates. I never knew anything about rebates between the Pennsylvania Railroad and the Columbia Coal Mining Company.

Q. Did you have any entries concerning the payment of any money by the Pennsylvania Railroad in the nature of any settlements with the Columbia Coal Mining Company?

A. No; none that I know of.

Q. If such had been paid, would you have entered them in the book?

A. I suppose so. Yes, of course, they would go through my hands during the time I was there.

Q. You went there in July, 1900?

A. In July, 1900; yes, sir.

Q. Have you any check books or bank deposit books prior to July 1st, 1900?

A. Yes, sir. I judge they are around there in the office prior to that time.

Q. Will you search for them, and bring them at the next meeting? I would like to have you produce any bank deposit books, check books, and also any cash book of the Columbia Coal Mining Company. Also any that you have up to May 1st, 1901, and also the cash books and ledgers that you have prior to July 1st, 1900?

A. I will do so.

Q. You say in those books you have brought with you there is no record, so far as you know, of any entry showing rebates given by the Pennsylvania Railroad to the Columbia Coal Mining Company, or monthly settlements?

A. I do not know anything at all about the rebates with the company. I would not have anything to do with adjusting anything like that.

Q. Who would?

A. I should judge the manager, if there was such a thing.

Q. Who is the manager?

A. W. H. Bradford was manager of the Columbia Coal Mining Company.

Q. When did he begin?

A. I do not know. He was there when I went there.

Q. How long did he continue as manager?

A. I judge up to around 1902 or 1903, somewhere around there. He got very sick.

Q. Where does Mr. Bradford live?

A. At Princeton, New Jersey.

Q. What is his full name?

A. Wilford H. Bradford.

Q. Who succeeded him?

A. Mr. Buch.

Q. As bookkeeper you made entries, I suppose, of all cash received during the period of your service?

A. Yes, sir.

Q. Did you see this certificate of stock book? (Referring to certificate of stock book by Mr. Buch.)

A. Yes, sir.

Q. Have you any earlier stock book?

A. No, sir. These are the first certificates that were ever issued of the Columbia Coal Mining Company. The stock was not fully paid and that is the reason there was no stock ever issued.

Q. Do you know what kind of stock John Lloyd held during 1897, 1898, 1899, 1900 and 1901?

A. No, sir.

Q. Do you know how much he held any one of these years?

A. No, sir.

Q. You say there were no certificates ever issued until the certificates in this book?

A. Those were the first certificates ever issued of the Columbia Coal Mining Company.

Q. Were there any certificates that took their place?

A. Not that I know of.

Q. Who is president of the Columbia Coal Mining Company?

A. John Lloyd.

Q. Who is president of the Latrobe Coal Mining Company?

A. J. G. Cassatt.

Q. Who was president of the Columbia Coal Mining Company in 1897, 1898, 1899, 1900 and 1901?

A. John Lloyd, as far as I know. He has been president as long as I have been with him.

Q. Who was president during the years 1897, 1898, 1899, 1900 and 1901 of the Latrobe Coal Company?

A. Mr. Cassatt.

Q. Mr. Cassatt is also a stockholder of the Columbia Coal Mining Company, is he not?

A. Yes, sir.

Q. Mr. Lloyd is also a stockholder of the Latrobe Coal Mining Company?

A. Yes, sir.

Q. Have you the books of the Latrobe Coal Mining Company, or any of them, over in your office?

A. We have the current books, that is the cash book, the journal and the ledger. I have the ledger here of the Latrobe, but the other books are up at Altoona. The office of the Latrobe Coal Company is at Altoona.

Q. Where are the books, the ledger, journal, cash book, check books and bank books of the Latrobe Coal Company for the years 1897, 1898, 1899, 1900 and 1901?

A. Up to July, 1900, I guess they are at Altoona, and from July, 1900, the current books are down here.

Q. Have you a record of the rebates paid the Latrobe Coal Company?

A. I do not know that there were any rebates ever

paid to the Latrobe. I have received trackage from our railroad of the Latrobe Coal Company.

Q. What is the name of the railroad?

A. I do not know. I do not believe it had any name. It is just a short road up there to the mine, which had a locomotive or two on it. I have never seen the road. The railroad is up there. We have switches and a locomotive on it from what I understand.

Q. Are you sure of that?

A. Yes, sir; I am sure of it.

Q. What do you mean by that ?

A. Because we have a locomotive on it, and then the switching charges, the switching of cars.

Q. What weight is the locomotive?

A. I have never seen it. I have never been up there to see this plant, but I understand from the vouchers, that come charged to the railroad or charged to locomotive repairs.

Q. You have never been up there?

A. No, sir; I have never been to Latrobe.

Q. You have not seen it?

A. No, sir.

Q. All you know is what you hear from other people?

A. Yes, sir; that is all I know. I don't know anything about it myself.

Q. Has the Latrobe Coal Company received any monthly settlements from the Pennsylvania Railroad on shipments of coal outside of this lateral allowance of trackage?

A. Not that I know of.

Q. You have no entries?

A. No, sir; only that trackage entry. That is the only one.

Q. How did you receive that?

A. I think that came by check, if I am not mistaken.

Q. From the railroad company?

A. Yes, sir.

Q. Who was the manager of the Latrobe Coal Company during the years 1897, 1898, 1899, 1900 and 1901?

A. I guess Thomas K. Maher was the manager. He represented Mr. Lloyd in the management of the companies.

Q. All the companies?

A. Yes, sir; outside of Columbia—

Q. That was the Latrobe, Altoona—

A. Latrobe, Henrietta—

Q. Altoona?

A. No. Charles C. Renshaw managed that.

Q. Was Renshaw manager during this period I speak about, 1897, 1898, 1899, 1900 and 1901?

A. I do not know about those earlier periods, but since I have been with them, Renshaw has been manager.

Q. You went there in July, 1900?

A. Yes, sir.

Q. You have no recollection of any monthly settlements being made with the Latrobe Coal Company on coal and coke shipped by them since you went there?

A. Only these charges for that railroad on our property, the trackage.

Q. Who pays the freights, since you went with the Latrobe Coal Company, to the Pennsylvania Railroad?

A. The consignees generally pay nearly all the freight.

Q. Does not the Latrobe Coal Company prepay some?

A. No. The Latrobe Coal Company ships all its coal for the account of the Columbia Coal Mining Company.

Q. The Columbia Coal Mining Company purchase all the coal—

A. All the output of the Latrobe Coal Company,

and if there is any freight to be paid, the Columbia people pay it.

Q. That is since you have been there?

A. Yes, sir.

Q. Who pays that freight for the Columbia Coal Mining Company? Do you?

A. Yes, sir. I make out the checks. We get our bills and work them up, make our voucher out and pay the Pennsylvania Railroad.

Q. Since you have gone there there has been no allowance from the tariff rate on freight?

A. No; none that I know of whatever.

Q. Do you know of any entries prior to the time you went there in any of the books indicating that there was allowance from the published tariff rates?

Objected to.

Question withdrawn.

Q. Are there any books that you know of containing a record of any monthly settlements of allowances from the published tariff rates prior to your entering the Columbia Coal Mining Company's employ as book-keeper?

A. No, sir.

Q. Have you looked to see whether there were any such?

A. No, sir; I never went to the trouble of that. I came from the hardware business, and, of course, I knew nothing about tariff rates or anything else until I got with the Columbia Company.

Q. Will you look between this and the next meeting and see whether there are any books containing entries of rebates?

A. I can look, but I do not think there are any around there.

Q. Have you looked?

A. I generally know what is in the vault.

Q. Do you know the amount of stock John Lloyd

held in the Columbia Coal Mining Company during the years 1897, 1898, 1899, 1900 and 1901?

A. No, sir. These shares (referring to stock certificate book) were issued. That was the first I knew of Mr. Lloyd's holding, or Mr. Cassatt's.

Q. What is the amount that Lloyd and Cassatt held there?

Objected to.

THE WITNESS: I do not know anything about what their holdings were prior to the time I was told to make these certificates out. There were never any certificates issued prior to these. I was simply told Mr. Lloyd had so many and Mr. Cassatt so many.

Question withdrawn.

Q. As I understand it, you will look over at the office and see whether there are any books containing any entries referring to rebates or drawbacks or monthly settlements by the Pennsylvania Railroad to the Columbia Coal Mining Company on coal shipped during the years 1897, 1898, 1899, 1900 and 1901?

A. Yes, sir.

MR. J. L. MITCHELL recalled for further cross-examination.

By MR. GOWEN:

Q. When did the Columbia Coal Mining Company cease to handle the output of your Company.

A. The last sale was made in December, 1900.

Q. Prior to that time what portion of the output of the Mitchell Coal and Coke Company had been handled by the Columbia?

A. In 1897 it was 8,594 tons; in 1898, it was 14,600 tons; in 1899, it was 7,988 tons, and in 1900 it was 1,669 tons.

Q. That was all that the Columbia Company handled of your output?

A. Yes, sir. The first two years the Columbia Company organized they handled a good deal more coal.

Q. Can you indicate what tonnage the Columbia did handle by territory or in any other way during the years they have named?

A. I have given you the tonnage.

Q. Take the tonnage for 1897; it amounted to how many tons?

A. Their tonnage was 8,594 tons.

Q. Was that tidewater coal or line coal?

A. Part of it was each. That is, it was both line and tidewater. I wouldn't say which it was. It was shipped both ways.

Q. That is, some of your line trade was handled through Columbia?

A. Yes, sir.

Q. And some of the tidewater?

A. Yes, sir.

Q. Is that true of all the years you have referred to?

A. Yes, sir. In February, 1898, I opened an office over here in the Land Title Building, in Philadelphia.

Q. Prior to opening an office here how was the balance of your output handled that was not handled by the Columbia?

A. We sold a great deal from the Tyrone office.

Q. How was the rest?

A. I guess I sold some coal to the Stirling Coal Company during those years.

Q. Was that under the same arrangement as the coal sold to the Columbia sold f. o. b. at the mines?

A. Yes, sir.

Q. To whom else did you sell it that way?

A. I couldn't hardly tell that. I have sold some coal to the Loyal-Hanna Coal Company.

Q. The statements which you are having prepared, which will show all coal sold f. o. b. mines, will include all coal sold to the Columbia and other companies in this way?

A. Yes, sir. I have that here.

Q. What coal did your company sell f. o. b. the mines during the period covered by this action?

A. Coal and coke shipped during this period and freight prepaid was 426,616 tons, coal and coke shipped during the period, sold delivered was 570,192 tons, coal and coke sold during this period at mines 729,683 tons.

Q. The last item, coal and coke sold and delivered at the mines includes coal on which the Mitchell Coal & Coke Company did not pay the freight?

A. Did not pay the freight.

Q. What is the distinction between the other two classes you have named there in respect to the freight?

A. The one instance would be, we would sell a man in Philadelphia, we will assume that, coal for, say three dollars a ton less freight, and he would pay the freight, and the other we would sell at three dollars a ton and we would pay the freight. The consumer would pay the freight and deduct it from our bill and send us the difference in the one case, and in the other case he would pay the full amount as we had prepaid the freight.

Q. I will have to ask you to furnish a statement showing the tonnage not merely in aggregate amount, but by consignee and date, which was sold by the Mitchell Coal and Coke Company f. o. b. the mines.

It is agreed that the statements that are in evidence showing Mitchell Coal and Coke Company shipments, shall be used as a basis for this statement, and that those shipments which were sold f. o. b. the mines shall be marked with a red tick.

Q. Does that figure 729,683 tons include coal sold to railroad companies?

A. Yes, sir. You told me to get that, and I have that here.

Q. Give us what the aggregate total shipped to railroad companies was during the period of the action?

A. To the Pennsylvania and P. W. B. Railroad Companies, which is all the Pennsylvania Railroad, 173,088 tons; and to the Cumberland Valley Railroad 35,573 tons. Those three were sold f. o. b. the mines, the Pennsylvania, the P. W. B. and the Cumberland Valley. The Delaware, Susquehanna and Schuylkill, 10,845 tons, sold at a delivered price. The Long Island Railroad 10,251 tons the freight was prepaid.

Q. That was sold at a delivered price, too, was it?

A. Yes, sir; sold at a delivered price and freight prepaid.

Q. What were the rates of freight that were paid on the shipments to the Delaware, Susquehanna & Schuylkill and Long Island Railroad Companies?

A. To the Delaware, Susquehanna and Schuylkill I paid a dollar and a half.

Q. The delivering point being what?

A. Drifton Junction, I think. Then part of the time, I got ten cents back on the rate.

Q. How did that rate of a dollar and a half compare with the rate on commercial shipments?

A. I think it was just the same.

Q. Was there any adjustment of that rate made?

A. Yes, sir; part of the time I got ten cents on it, and for two or three months I got fifteen cents.

Q. Can you give us the period?

A. No; I cannot today.

Q. Do you know when those shipments were made?

A. I think they were made in 1899 and 1900.

Q. You do not know what months?

A. No; I couldn't tell.

Q. But the statement of shipments filed shows that?

A. Yes, sir.

Q. What was the rate paid on the Long Island?

A. That was \$1.35.

Q. Where was the delivery point?

A. At Jersey City.

Q. How did that compare with the commercial rate?

A. It was just the same as other shipments at that point. Just the same rate. I looked it up. It was the regular rate. A dollar and thirty-five cents was the regular rate when that coal was shipped.

Q. What do you mean by the regular rate?

A. The regular tariff rate.

Q. You say \$1.35 at that time was the tariff rate?

A. Yes, sir.

By THE REFEREE:

Q. Do you mean the published rate?

A. Yes, sir. I think this coal was shipped after the rebate business was stopped.

By MR. GOWEN:

Q. Have you looked into that to see whether that was the regular rate?

A. Yes, sir. The Lehigh Valley 761 tons, and the freight was prepaid. I am not certain what that rate is, but I think that was a little lower than the regular commercial rate.

Q. Where was that delivered?

A. Mount Carmel, most of it; a little bit at Wilkes-Barre.

Q. Have you given us all the shipments of railroad coal?

A. I have given you all the railroad coal.

Q. You were going to look into the variation in rates in the different regions. You testified when you were previously on the stand that you thought the dif-

ference in the coke rates between the Latrobe and the Clearfield regions was fifteen cents. I ask you whether in point of fact it was not twenty cents?

A. Yes, sir. I was mistaken. When we first commenced shipping coke the rates from Connellsville region were fifty cents a ton higher than from Gallitzin to eastern points. The rates from Latrobe region were twenty-five cents per ton higher than the Gallitzin rates. Subsequently and during the period of this suit the Connellsville and Latrobe rates were reduced ten and five cents per ton respectively, making the rates from Connellsville to the east forty cents per ton above Gallitzin, and from Latrobe twenty cents above Gallitzin. We were never able to obtain rates that would enable us to ship Gallitzin coke to Pittsburg or the west.

Q. You could not have shipped it if you had had equal rates with the Connellsville coke to points west, could you?

A. At times we could; yes, sir.

Q. Connellsville coke is distinctly better coke than the Clearfield coke, is it not?

A. Yes, sir; some.

Q. How much nearer Pittsburg market was it?

A. There should not have been so very much difference.

Q. How much nearer the Pittsburg market is it?

A. The Connellsville would be probably fifty or sixty miles—hardly that—it is about forty-five miles farther.

Q. Then during the entire period covered by this action the rates on coke from the Latrobe region to points east were twenty cents a ton higher than from the Clearfield region in which your mines were located?

A. Yes, sir.

Q. Are you able to say now as a result of your examination whether the rates on coal from the Latrobe region prior to April 1st, 1899, were not fifteen cents a

ton higher than the Clearfield rate to all points, both State and interstate, with the one exception of New York State points which were reached by the Northern Central Railroad?

A. The tariff rates on coal from the Latrobe region to eastern points in Pennsylvania and other States, excepting New York State points reached by the Northern Central Railroad, prior to April 1st, 1899, were fifteen cents per ton higher than the Clearfield region, but adjustments were made with the Columbia Coal Mining Company—

Q. I am not asking you that. I asked you what the rates were. On April 1st, 1899, the published rates from the Latrobe region to all points outside of the State of Pennsylvania were reduced to the level of the Clearfield rates, were they not, so that after April 1st, 1899, the interstate rates from the Latrobe and the Clearfield regions were the same to all eastern points?

A. The published rates I think were the same.

Q. But, on April 1st, 1899, the rates from the Latrobe region to points within the State were not reduced to the Clearfield rate, were they?

A. I do not know that the published tariff rates were reduced.

Q. When were those published tariff rates to State points reduced from the Latrobe region to the Clearfield rates?

A. I could not say.

Q. You do not know when they were reduced?

A. No, sir.

Q. I think there was only one other matter you were going to look up, and that was the length of time during which the railroad company operated the Gallitzin spur or branch after you had commenced to operate it and then suspended operation?

A. In the latter part of April or the fore part of May, 1900.

Q. You stated you discontinued it for three or four weeks?

A. I think probably it was about four weeks. There were about twenty thousand tons shipped during that time.

Q. Have you no way of getting at the exact period?

A. I think it was about the 15th of April, 1900, that we sent the one locomotive away, and I bought another on the last of April, and I suppose it took about ten days to get it there.

Q. That is as near as you can come to it?

A. Yes, sir. The 30th of April, along there.

THE WITNESS: I wish to correct my statement made at the last meeting as to one or two distances. The distance from Gallitzin to Latrobe is sixty-five miles. I thought it was about fifty miles. Gallitzin is sixty-five miles nearer eastern points than Latrobe. Hastings mine was the greatest distance from eastern points of any of our mines, and it is about thirty miles nearer the eastern market than Latrobe.

Mr. Gowen asked me a question in regard to what I knew about Altoona Coal and Coke and Glen White freights, what they got. I always heard they got ten cents a ton lateral on through business, but on short hauls, that is, west of Bellwood, I think they only got six cents difference in rate between Gallitzin and Kittanning Point. I had never heard that they got this lateral on the short hauls.

Re-direct-examination.

By MR. GILFILLAN:

Q. Can you tell what was the gross rate on shipments by you of coal and coke from Gallitzin to Bennington furnace, Altoona, Blair furnace, Allegheny furnace, Hollidaysburg or Bellwood or intermediate points?

A. I do not know what it would be to Bennington furnace, but to Altoona and Branch points it was forty-five cents, and to Hollidaysburg forty-five cents.

Q. Six cents more?

A. Against thirty-nine cents. That is the only difference I think they had. I am not sure.

Q. You did not know that they had the lateral on the short haul?

A. No, sir. That is from Gallitzin. In other mines it was a higher rate. I think from Columbia mines it was probably sixty or sixty-five cents.

Q. From Hastings?

A. From Hastings would be about the same as Latrobe.

Q. Can you find out definitely?

A. Yes, sir. I can find out. Hastings is one of the points that we could not ship from to Altoona; the distance was too great.

Q. Was most of your coal and coke that you shipped to Altoona points on the Hollidaysburg branch shipped from the Gallitzin mine?

A. Mostly from Gallitzin. Some from Columbia No. 4.

Q. I think you gave the distance from the Gallitzin to Altoona and from Kittanning Point to Altoona before?

A. I think so.

Q. How much farther from Altoona are the Columbia mines than the Gallitzin?

A. Eight miles further than Gallitzin.

Re-cross-examination.

By MR. GOWEN:

Q. In making a request for the payment of a lateral to you, you made that request to cover all your shipments, did you not?

A. No, sir. All except railroads. Which do you mean by making requests?

Q. When you were negotiating with the Railroad Company with reference to the movement of your coal over the Gallitzin spur yourself, you wanted them to pay you five cents a ton for your services, did you not?

A. I started in with Mr. Shepherd and wanted ten cents, and he said that was unreasonable and they wouldn't pay anything like that, and he says, "See if you can't do something better than that", or talk of that kind. So then I made a request, that is, made an offer to do it at five cents.

Q. And that five cents was to be paid on all the coal moved over it?

A. Yes, sir.

Q. Even though it went to those short points?

A. Yes, sir. Because I understood they didn't get it on short points.

By MR. GILFILLAN:

Q. When you say "they", who do you mean?

A. Altoona Coal and Coke Company and Glen White.

Q. Did they ever pay you anything, ten cents or five cents?

A. No, sir; never paid anything.

Adjourned until Wednesday, May 22nd, 1907,
at 3:30 p. m.

Wednesday, May 29, 1907.

Present:

HON. THEODORE F. JENKINS, Referee.

JOSEPH GILFILLAN, Esq., for Complainant.

FRANCIS I. GOWEN, Esq., for Respondent.

J. G. SEARLES, recalled.

By MR. GILFILLAN:

Q. During what period was the coal and coke

shipped at quoted rates as differentiated from published or open rates?

A. Coal is always shipped at the tariff rates.

Q. Coal?

A. Yes, sir; and coke, both. It is always shipped at the tariff rates. It is not shipped at rate quoted, that is, if the rate quoted was anything less than tariff rate. It would be billed and charged at the tariff rate.

Q. Did you not quote rates to shippers before they shipped different from the published rates?

A. Sometimes.

Q. During what period was that practice in existence?

A. I do not know that I could tell you. I do not understand your question. What period do you mean?

Q. There was a period, as I understand it, when the coal and coke were shipped according to one certain rate; there was a period for a year or two prior to the beginning of that practice when the shipper went to you, or, at least, some shippers went to you and a rate was quoted to them different from the published rate?

A. Yes, sir.

Q. What period was that when you quoted a rate different from the published rate?

A. It varied. Prior to April 1st, 1899, I think. My recollection is it took effect April 1st, 1899, that we changed our tariffs and issued to the interstate points the net rates; or, rather, that we made no quotations lower than the tariff rates after that period as to interstate points. I am not quite sure about that. I will have to refresh my memory. I am not quite sure as to the date.

Q. As to interstate points?

A. Yes.

Q. What about State points?

A. I think we issued to some State points, and we continued to quote lower rates to some State points. That I think was up to August, 1899. Then we made

another change in our tariffs, if I remember correctly, reducing the tariff rates to quoted rates to those points.

Q. After April 1st, 1900, all of the rates both State and interstate were—

A. Were reduced from the tariff to the quoted rate. We may have advanced them on April 1st, 1900.

Q. There was one rate?

A. Yes, sir.

Q. And that was stuck to?

A. That is my recollection.

Q. Prior to April 1st, 1899, on interstate shipments, for how long a period did you have the quoted rate and a published rate?

A. During the year beginning April 1st, 1898, and during the previous year, the year ending March 31st, 1898.

Q. And beginning April 1st, 1897?

A. Yes, sir.

Q. During the year 1897 and 1898, up to April 1st, you made out the published rate and the quoted rate on both coke and coal shipments?

A. Yes, sir. To some points.

Q. Both State and interstate?

A. Yes, sir.

Q. From April 1st, 1899, there was one rate to interstate points which was stuck to by the railroad?

A. That is my recollection. I would not like to say.

Q. To the best of your recollection?

A. Yes, sir.

Q. As to State shipments, you made no change in April 1st, 1899, but you did make a change in August of 1899?

A. No. I think as to State points we made changes to some of the points on April 1st, 1899.

Q. Can you remember some of the points?

A. I am not sure. I could not tell now without referring to the tariffs.

Q. After August 1st, 1899, was the change made to all the points?

A. No; not to all of the points.

Q. But the number of points was increased as to which there was one rate?

A. Yes, sir. That is my recollection.

Q. There were still some points in Pennsylvania where there was a published rate and a quoted rate?

A. I think so.

Q. How long did that continue?

A. Until March 31st, 1900.

Q. Can you remember some of the points, they being fewer in number, which continued to enjoy the published rate and the quoted rate?

A. It would be entirely from memory.

Q. That is what I want to get.

A. My recollection is that there were some points west of Philadelphia, between Philadelphia and Harrisburg perhaps, and some points in the Schuylkill Valley, and some points on the Cumberland Valley Railroad. That is my recollection now.

Q. Who had charge of the books or papers in your office that contain this information?

A. They are generally under my charge.

Q. What particular clerk, for instance, kept a record of the published rates and the quoted rates?

A. During a portion of the period, Mr. Fitler. Your question is not quite clear. I cannot give you a clear answer to it in that way. You asked me what clerk kept a record of the tariff rates and of the quoted rates.

Q. Yes.

A. No special record was kept of the tariff rates; they were in the tariff book or in the tariffs themselves.

Q. Have you a book in your office which shows the tariff rates and the quoted rates?

A. Yes, sir; during a portion of the period.

Q. What period does that cover?

A. That is from 1898. It was during the entire year 1898 to March 1st, 1899, and I think until the 1st of August, 1899. I am not quite clear about that.

Q. What clerk in your department had charge of the making up of the letters to the Accounting Department showing the settlements that were to be made from the published rates with these various companies mentioned?

A. Various clerks. Mr. Strong and Mr. Fitler.

Q. Were the adjustments that were made from the published to the quoted rate contained in the same copy books that the lateral allowances were contained in?

A. I think so.

Q. Give the Referee, if you can, a sort of a description of what was contained in those books. I mean the transmittal letter copy book.

A. They were letters in printed form addressed to the auditor of coal freight receipts, with instructions to settle at certain rates on shipments to certain points, or, perhaps in some cases, at so many cents per ton less than the tariff rates.

Q. Would the region be specified in the letter?

A. Yes, sir.

Q. Had you some cases where the same allowance was made from the Clearfield and Latrobe regions?

A. There may possibly have been some.

Q. Have you looked the matter up?

A. Yes, sir. I find that during a certain period, that is, after April 1st, 1898, I think in some cases—as to tidewater I am talking about now—as to tidewater in some cases the rates were the same. The Auditor was instructed to settle at the same rates as on shipments from the Clearfield region.

Q. The published rate from the Latrobe was a little higher prior to April 1st, 1899, than from the Clear-

field region, except New York points reached by the Northern Central?

A. I think so.

Q. Was not the net rate from the Clearfield and Latrobe regions the same? When you came to make the settlement did you not equalize the freight rate as to the Columbia Coal Mining Company as to Altoona and Latrobe?

A. No, sir; I do not think we did.

Q. Did you look it up?

A. No; I have not looked that up. In a general way, I have looked it up in some cases, and I know it was not so.

Q. Did you not equalize the net rates from the Latrobe and the Clearfield regions in so far as the Columbia Coal Mining Company was concerned?

A. That I could not answer.

Q. Will you look that up?

A. I will do so; yes, sir.

Q. There are markets known as the western market and the eastern market in the coal trade, are there not?

A. Yes, sir.

Q. Are there groups in the eastern market?

A. Just what do you mean?

Q. I mean have you destinations which are within a group, although not the same distances, which enjoy the same rate?

A. Yes, sir.

Q. Can you give use those groups?

A. No, I could not.

Q. Have you such groups?

A. No, sir.

Q. Have you any memorandum which shows such groups?

A. No, sir. Except the tariffs. The tariffs would not show any groups.

Q. The tariffs, as I understand it, would show the various points and the tariff rates to those points?

A. Yes, sir.

Q. During the period when there were these adjustments from the published to the quoted rate, the book which you spoke of would show the quoted rate to the various points as well as the tariff rate?

A. Yes, sir. I might say this just here; that there was a great many points to which we made no concessions at all.

Q. You made concessions, however, did you not, so far as the Columbia Coal Mining Company, the Altoona, the Glen White, the Latrobe, the Millwood and Bolivar were concerned, generally to all points in the eastern market, and as to Bolivar, to all points in the western market?

A. No. The shipments from Bolivar were very light indeed. They shipped very little coal, and we made them no concession whatever. I mean we paid them no lateral allowances whatever on their coal shipments.

Q. Bolivar was simply coke?

A. There were only a few points. As I say, the shipments from Bolivar were very light indeed, very trifling. There were only very few points to which they shipped coal, and that only spasmodically.

Q. How about coke?

A. Their shipments of coke were very small, too.

Q. Bolivar did ship to the west?

A. Yes, sir; to some extent, I think.

Q. Were there no points to what is known as the western market that you made allowances to Bolivar from the published tariff rates?

A. No, sir. Not that I know of.

Q. Will you look that up?

A. I do not know that I have anything that would show. I do not think we ever quoted them a rate to the western points less than tariff.

Q. You did quote to the Bolivar, as well as to the others, a rate less than the published rate, to the eastern points?

A. In one or two cases. Very few cases.

Q. They did not ship much?

A. No.

Q. Was New York State in a group by itself?

A. No. What do you mean by in a group by itself?

Q. I mean was there any uniform rate to all points in New York?

A. No, sir.

Q. Were there any uniform rates to points east of Albany?

A. No. The rates to points east of Albany vary.

Q. How were the rates quoted as to points, east of Bellwood so much, to Harrisburg so much, to Philadelphia so much, to Trenton so much, and to Jersey City so much?

A. Yes, sir.

Q. And the rates along the lines varied?

A. Yes, sir.

Q. You said that the Clearfield and Latrobe rates were the same on coal shipped to tidewater to be shipped outside the capes.

A. That was only during a portion of the period, and I cannot tell you now exactly when that was.

Q. Can Mr. Strong tell?

A. I do not know whether he can or not.

Q. You have not talked to him about it?

A. No.

Q. Have you looked that question up? I mean the question as to the period that that existed?

A. I have looked up everything I could think of, but I did not look up that particular question. You asked Mr. Gowen for me to bring a letter to the Auditor about the tidewater rates.

Q. You can easily ascertain during what period that occurred, from your books?

A. Yes, sir; we can tell as to our tariffs.

Q. And from your settlements you can tell as to the net rates from the regions?

A. Yes, sir. I can now. I have looked into that very carefully, and I found very few settlements on shipments to tidewater from Latrobe. Nothing from Millwood or Bolivar.

Q. How about Columbia?

A. Columbia was shipped from various points all through the Clearfield region and every other point. They bought coal, and I assume they bought it from a great many shippers.

Q. You did give the same net rate to Columbia for coal from Latrobe as from Clearfield, shipped to tidewater to be shipped outside the capes?

A. No, sir. I think not. Not until we reduced the rates from Latrobe to the Clearfield basis.

Q. When was that?

A. I think that was the 1st of April, 1900. I am not quite clear about that.

Q. Was it not April 1st, 1899?

A. Possibly. I am speaking from memory. I do not know.

Q. What is your best recollection; was it April 1st, 1899, or April 1st, 1900.

A. It might have been April 1st, 1899. I am not positive.

Q. From that time on the rates were the same from Latrobe and from Clearfield region?

A. They were and are today.

Q. And have continued to be from April 1st, 1899?

A. From the time we changed the tariffs; yes, sir.

Q. Which is, according to the best of your recollection, about April 1st, 1899?

A. Yes, sir; April 1st, 1899, or April 1st, 1900, I cannot say which. I will look it up.

Q. What books would show?

A. Our tariffs.

Q. Will you bring your tariff books with you the next time?

A. There are a great many of them. They would fill this room.

Q. You will look it up and verify it?

A. Yes, sir. As to tidewater you are talking about now?

Q. Just now I am talking about tidewater. Define what you mean by tidewater.

A. We mean by tidewater, coal shipped from the shipping piers at tidewater transferred into boats.

Q. That means tidewater at any place?

A. We only have three tidewater shipping points.

Q. What are they?

A. Baltimore, Philadelphia and South Amboy.

Q. It is only to those three places that the phrase "outside the capes" is used?

A. It only applies to Baltimore and Philadelphia.

Q. The rate was the same then from Latrobe and Clearfield regions prior to April 1st, 1899, in some instances on coal that was shipped to South Amboy to be re-shipped?

A. I do not think so.

Q. The instances to which you have referred as the rates from Latrobe and Clearfield being the same prior to April 1st, 1899, referred to Baltimore or Philadelphia?

A. I do not think I testified that the rates were the same prior to April 1st, 1899. I did not mean to.

Q. Did you not say a few moments ago that you found a few instances where the Clearfield and Latrobe rates were the same on coal shipped to tidewater to be re-shipped outside the capes?

A. Prior to April 1st, 1899?

Q. Yes.

A. No; I do not think I said that.

Q. You did not mean it as prior?

A. No, sir.

Q. Since April 1st, 1899, the rates from Latrobe and Clearfield regions on coal have been the same, no matter where the destination was?

A. No; I did not say that, either. I said I could not be positive as to the date.

Q. Assuming that April 1st, 1899, is the correct date, then what is your answer to the prior question?

A. Then I would say they were the same, assuming that was the date we changed our tariffs.

Q. Depending on whether April 1st, 1899, or April 1st, 1900, is the correct date, all shipments on coal from Latrobe and Clearfield regions were shipped at the same rate, no matter what the points of destination were?

A. No; that would not be so.

Q. Wherein is it not so?

A. When we can clearly define the date upon which the tariffs were issued, making the same rates from the Latrobe region as from the Clearfield region, then to points east of Lewistown Junction, I think, or, perhaps, points east of Harrisburg, Harrisburg and points east, the rates would be the same.

Q. Whether tidewater or not?

A. Yes, sir.

Q. What did you mean when you said that you found a few instances where the Latrobe and Clearfield net rates were the same when shipped to tidewater for re-shipment outside the capes?

A. I do not know that I can answer that, because I cannot recall during what period that was. I think we have it on some statements that we have here.

Q. Were there any shipments from Latrobe which had the same net rate as from Clearfield prior to April 1st, 1899?

A. That I could not answer without going over our books again.

Q. What did you mean to convey when you made the apparent differentiation of coal to be re-shipped outside the capes?

A. There are two rates on tidewater coal both to Baltimore and Philadelphia, one which applies on coal re-shipped, in the case of Philadelphia, outside the capes of the Delaware, and in the case of Baltimore, on coal shipped outside the capes of the Chesapeake, but the other places, on coal re-shipped and delivered on water to points located on the water front within the capes of the Delaware or the Chesapeake, as the case may be.

Q. What did you mean when you said in answer to my question that there were some instances where the Clearfield and Latrobe net rates were the same, and those instances were where coal was shipped to tidewater to be re-shipped outside the capes?

A. I think I must have meant subsequent to that period, after we changed the tariffs.

Q. After you changed the tariff—

A. It would be the same.

Q. But there would be no difference inside or outside the capes or on the line of the railroad?

A. No.

Q. So far as the difference between the regions was concerned?

A. No.

By MR. GOWEN:

Q. Are you not wrong about that, because were not the interstate points made the same first?

A. Yes. On October 19th, 1896, the rates to New York State points reached via the Northern Central Railway, that is the junction point on the line of the Northern Central Railway, north of Williamsport, were from the Latrobe region made the same as from

the Clearfield region. That was the first. That also applied to some points reached via Wilkes-Barre. On April 1st, 1899, they were the same to all interstate points eastbound.

By THE REFEREE:

Q. You mean rail points?

A. Yes, sir. Rail and tidewater, I assume.

By MR. GILFILLAN:

Q. That was either all rail or tidewater?

A. All interstate points eastbound. The same date to points on the Lehigh Valley Railroad. That would be points, I think, within the State of Pennsylvania, via Mt. Carmel, and to the Central Railroad of New Jersey points via Buttonwood, I assume—my memory is not clear on that—the rates from Latrobe were made the same as from Clearfield.

Q. As of April, 1899?

A. Yes, sir. On December 3rd, 1900, they were made the same from the Latrobe region as from the Clearfield region to points in Pennsylvania, Harrisburg and the east and south thereof, via our own line, and also points on the Philadelphia and Reading Railroad via Harrisburg.

Q. Baltimore came within the group of interstate as to which the Latrobe and Clearfield rates were made the same April 1st, 1899?

A. Yes, sir.

Q. Into which group would shipments made to Greenwich for re-shipment come?

A. They would be considered as points within the State of Pennsylvania.

Q. State when it was that Clearfield and Latrobe rates were made the same as to points within the State of Pennsylvania?

A. December 3rd, 1900.

Q. Shipments made to Greenwich for distribution, say along the water front, would be intrastate?

A. Intrastate; yes, sir.

Q. And shipments made to Greenwich for re-shipment outside the capes would be interstate?

A. So far as this was concerned, so far as the rates that were charged. All of this testimony on this point has been in regard to coal. I am not testifying as to coke rates.

Q. When were the rates on coal shipped from the Latrobe region and Clearfield region made the same where the coal was sent to Greenwich for re-shipment outside the capes?

A. For re-shipment by water outside the capes, or within the capes, December 3rd, 1900.

Q. What about the rates on coke so far as affects this question of equalizing the rates from Latrobe and Clearfield?

A. They never have been equalized.

Q. How much higher is the rate from Latrobe than from Clearfield during that period?

A. You are not stating the question just right. On coke we do not classify it as a Clearfield region. There are very few coke operations in the Clearfield region as compared with the coal operations, so that we at that time designated them on our tariffs as the Mountain region or Gallitzin.

Q. You did not classify them as Clearfield and Latrobe?

A. We did as to Latrobe, but not Clearfield.

Q. Is the Latrobe west of Clearfield?

A. Yes, sir.

Q. You were asked (p. 72) these questions, and you testified as follows: "Q. During the period of 1897, 1898, 1899, 1900 and 1901, what was the rate paid by the Altoona Coal and Coke Company on shipments from Kittanning Point to points west of Bellwood, and on the Hollidaysburg branch? A. I could not answer that question without referring to my freight books.

Q. Will you please ascertain that? A. I will do so.

Q. What were the rates paid by the Glen White Coal Company on shipments from Kittanning Point to points west of Bellwood and on Hollidaysburg branch?

A. I should make the same reply to that inquiry. Q. The question applies to both coal and coke both from Altoona Coal and Coke Company and the Glen White?

A. Yes. Q. And the fact as to whether on such shipments the Glen White got the fifteen cents lateral and the Altoona Coal and Coke Company the thirteen cents lateral? A. I will ascertain." Can you tell us now?

A. I think Mr. Gowen gave you a memorandum or statement of the rates.

(Paper produced.)

Q. Answer the question, refreshing your memory from the memorandum which you have produced. My question is as to whether shipments from Kittanning Point to points west of Bellwood and on Hollidaysburg branch Glen White got fifteen cents lateral and Altoona Coal and Coke Company got thirteen cents lateral?

A. As to both coal and coke do you mean?

Q. Yes.

A. No; that is not right. On shipments of coal to points west of Bellwood and on the Hollidaysburg branch, I do not mean going west of Gallitzin, because I have not looked that up. You said west of Bellwood.

Q. I am speaking of shipments from Kittanning Point?

A. Yes; from Kittanning Point to Bellwood?

Q. West of Bellwood and on the Hollidaysburg branch?

A. West of Bellwood? I do not understand your question to be as general as that. The fact is I do not think they shipped any coal west, unless it may have been an occasional car of smithing coal. I assume by west of Bellwood you mean Altoona and points on the Hollidaysburg branch?

Q. Yes; that is correct.

A. Assuming that that is correct, I would say on shipments of coal to those points the Altoona Coal and Coke Company did get thirteen cents per gross ton lateral, on coke ten cents per net ton.

Q. What about the Glen White?

A. The Glen White got fifteen cents per gross ton on coal and fifteen cents per net ton on coke.

Q. What were the freight rates from Kittanning Point?

A. On coal during the period from April 1st, 1897, to June 21st, 1899, the rates on coal from Kittanning Point were as follows: To Altoona thirty-nine cents per ton, to Blair furnace thirty-nine cents per ton, to Allegheny furnace thirty-nine cents per ton, to Duncansville furnace thirty-nine cents per ton, to Hollidaysburg thirty-nine cents per ton, to Bellwood thirty-nine cents per ton. During the period from June 22nd, 1899, to May 1st, 1901, to Bennington furnace, forty cents per ton, to Altoona thirty cents per ton, to Blair furnace thirty-nine cents per ton, to Duncansville thirty cents per ton, to Hollidaysburg thirty cents per ton, to Bellwood thirty-nine cents per ton.

As to coke, there were rates issued to only three points. These points were, from Kittanning Point, April 1st, 1897, to December 31st, 1899, to Allegheny furnace forty-two cents, to Hollidaysburg forty-two cents, to Bellwood forty-two cents. From January 1st, 1900, to May 1st, 1901, to Allegheny furnace forty-two cents, to Hollidaysburg forty-two cents, to Bellwood sixty-five cents.

Q. Kittanning Point was the shipping point for both the Altoona Coal and Coke Company and the Glen White Coal and Coke Company?

A. That was the point at which the shipments were turned over to the Pennsylvania Railroad.

Q. That was the shipping point from which the shipments started, so far as the Pennsylvania Railroad was concerned?

A. So far as the Pennsylvania Railroad was concerned.

Q. Give me the rates to the same points from Gallitzin?

A. I have not got them.

Q. Do you not know what they were?

A. No. I would have to get them from the book. You only asked me for the rates from Kittanning Point.

Q. Will you make up a list so you can testify as to the rates to those points west of Bellwood on the Hollidaysburg branch from Gallitzin?

A. Yes, sir.

Q. And any other points to which coal or coke was shipped from Gallitzin west of Bellwood on the Hollidaysburg branch?

A. Now you are asking me to do something I cannot, because I have no means of knowing from what point the coal was shipped.

Q. To what point?

A. I have no means of knowing to what point they shipped it.

Q. Where did you get the statement you have here?

A. You asked me about the rates. I am not testifying as to the shipments; I am testifying as to the rates.

Q. That is what I want. Bring with you also any data that you have showing the rates from Gallitzin to Bennington furnace, Altoona, Blair furnace, Allegheny furnace, Duncansville furnace, Hollidaysburg and Bellwood both for coal and coke, and to any other point on the Hollidaysburg branch where you quoted rates from Gallitzin in addition to those?

A. I will do so.

Q. Have you with you the book showing the published and the net rates?

A. No. I looked at that book.

Q. Bring the book with you next time.

A. I will. We did have it over here the first day I was here.

Q. Have you the statements with you showing the amount of money that was paid to the Altoona Coal and Coke Company, the Latrobe Coal and Coke Company, the Millwood, the Bolivar, and the Glen White?

A. I have.

Q. Please produce them.

Witness produced statement showing the amount of money paid to the Altoona Coal and Coke Company during the time covered by the present action as lateral allowances.

Witness also produced a similar statement as to the Glen White Coal and Lumber Company.

Q. I notice on the Glen White Coal and Lumber Company statement that there are certain cities and towns specified and apparently certain freight rates quoted, which do not appear on the Altoona Coal and Coke Company statement?

A. Because they had not any shipments similar to those.

Q. What do you mean?

A. I mean in going over our books we found in addition to the lateral here which is shown on all of these statements that we made settlements with the Glen White Coal and Lumber Company on shipments to the points named in the statement, viz., Philadelphia, Downingtown, Perkiomen Junction, all Pennsylvania points; Trenton, New Jersey; East Downingtown, Pennsylvania; Wilmington, Delaware; Perryville, Maryland; North East, Maryland; Cynwyd, Pennsylvania; Syracuse, New York. That is as to coal. On coke, to Royersford, Pennsylvania; Sewaren, New Jersey; and Maurer, New Jersey.

Q. That was a rate adjustment in addition to a lateral?

A. Yes, sir.

Q. Give us the published rates and the net rates and the amount of the allowance of the rate adjustment. Take it from this paper as far as you can. For instance, here is \$1.25 and here is twenty-five cents. There is nothing there that explains what that is.

A. I assume that when we sent in the statement covering the shipments for the month of May, 1897, we instructed the Auditor to settle at a \$1.25 on shipments to Philadelphia. When we sent in the statement covering the shipments for the month of June, 1897, to Philadelphia, we instructed him to settle at twenty-five cents a ton off tariff rate. In other words, the tariff rate was probably a dollar and fifty cents. I cannot say.

Q. In both May and June?

A. Yes, sir. Where it says "overcharge", that means twenty-five cents.

Q. "O-C .25" in June, 1897, it means overcharge twenty-five cents?

A. Yes, sir.

Q. Which overcharge was refunded?

A. Yes, sir.

Q. And is meant to be twenty-five cents allowance from the published rate?

A. That is right. I assume that is right.

Q. Where you have a dollar and twenty-five cents under May, 1897, and no "O-C", that is meant to be the rate at which the settlement was made?

A. The difference between that and the tariff rate.

Q. You think that is probably a dollar and a half in both cases?

A. Yes, sir.

Q. And they probably got twenty-five cents off the tariff rate in May, 1897, and twenty-five cents off in June, 1897, although they are indicated by different methods?

A. Yes, sir.

Q. That is true of all these figures running through?

A. Yes, sir.

Q. Have you a similar statement for the Millwood?

A. Yes, sir.

Witness produced statment showing the amount of money paid the Millwood during the time covered by the present action as lateral allowances.

Q. What do those figures \$1.17 mean in the Millwood statement in May, June, July, August, September and October. 1900?

A. That means that that is the rate at which we settled those shipments.

Q. There was an allowance there to the Millwood Coal and Coke Company from the published rate?

A. An allowance to the Millwood Coal and Coke Company for the difference between a dollar seventeen cents per ton and the tariff rate.

Q. And that was in addition to the lateral allowance?

A. Yes, sir.

Q. That was to Steelton, Pennsylvania?

A. Yes, sir; to Steelton.

Q. Will you please produce a similar statement as to the Latrobe Coal and Coke Company?

Witness produced statement showing the amount of money paid to the Latrobe Coal and Coke Company as lateral allowance during the time covered by the present action.

Q. What does this fifteen cents under March, 1898, and opposite Philadelphia, Perkiomen Junction and Millville, New Jersey, indicate?

A. That indicates that we settled with the Latrobe Coal Company on shipments made to those points dur-

ing the month of March, 1898, at fifteen cents per ton for the tariff rate.

Q. That was in addition to the lateral allowance?

A. Yes, sir.

Witness produced statement showing the amount of money paid to the Bolivar Coal and Coke Company as lateral allowance during the time covered by the present action.

Q. Were there any rate adjustments or allowances made from the published tariff rates to the Bolivar Coal and Coke Company?

A. I have not been able to find any during that period.

Q. Do I understand you to say that you have no record of any allowance made to the Bolivar Coal and Coke Company?

A. I have not been able to find any. I do not think there was.

Q. Have you a list showing the allowance made to the Columbia Coal Mining Company?

A. No, sir.

Q. Will you produce such a list?

A. I will.

Q. You made rate adjustments from the published rates with Taylor and McCoy during the period when you had the two rates, did you not?

A. Possibly in some cases they might have been made with Taylor and McCoy and in other cases with the Glen White, I couldn't tell you.

Q. Taylor and McCoy purchased the coal from the Glen White Coal and Lumber Company in a great many instances and received the settlements, did they not?

A. I do not think so.

Q. Taylor and McCoy purchased a great deal of coal from the Glen White Coal and Lumber Company, did they not?

A. I did not understand it so.

Q. Coke?

A. I could not answer that question, because I do not know. But, I do not think they did. My understanding was that Taylor and McCoy were the Glen White Coal and Lumber Company.

Q. Outside of these settlements and the money that appear on this sheet to have been paid to the Glen White Coal and Lumber Company, there were additional settlements made with Taylor and McCoy for coal and coke shipped from the Glen White mines, were they not?

A. I do not think there were. I do not know, because I have not looked that up.

Q. Did you not say a moment ago that in certain instances the settlements were made with Taylor and McCoy?

A. I say they may have been. I could not answer that question.

Q. Will you look that up and bring us a list covering the period of this action of the settlements made with Taylor and McCoy?

A. I will.

Q. In the Altoona Coal and Coke Company's statement there appear to be no allowances or rate adjustment over and above the lateral allowances?

A. I have not found any.

Q. You know, do you not, that the rate adjustment was made with the Columbia Coal Mining Company on this very coal?

A. I do not.

Q. Do you know that the Columbia Coal Mining Company purchased most of the output of the Altoona Coal and Coke Company?

A. I do not.

Q. Do you know from whom the Columbia Coal Mining Company purchased its coal, what mines?

A. No.

Q. Will your transmittal letter books show from what regions the coal was shipped upon which rate adjustment was made?

A. Yes, sir. It would show this, that on shipments from the Clearfield region, such and such rates to apply or so much off the tariff rate, as the case might be, and, if there were shipments from any other region, it would specify what the rates were to be from those regions.

Q. Did John Lloyd ever tell you that the Columbia Mining Company purchased most of the output of the Altoona and Latrobe Coal Mining Company?

A. I do not think he ever did.

Q. Did he ever have any discussion with you on the question of that purchase?

A. I cannot recall that he did. He may have.

Q. Are there any letters on file in your department in which John Lloyd stated that the Columbia Coal Mining Company purchased most of the output of the Latrobe and Altoona Coal Companies?

A. I do not think so.

Q. Have you looked?

A. No, I have not looked.

Q. Have you come across any?

A. We have not come across any such letter.

Q. You were to make up a list of the published and net rates during the period when they were in operation?

A. Yes, sir.

Q. Did you take that list from that book that I have referred to?

A. Yes, sir.

Q. Is the list that you have made and presented a correct copy of that book?

A. Oh, no; not a correct copy of the book.

Q. Is it a correct abstract?

A. Yes, sir; abstracts taken from the book. We did not put anything on these statements except as to the parties referred to in this suit.

Q. That book contains the destinations all along the line, does it not?

A. Yes, sir.

Q. And contains the published rate and the net rate?

A. Yes, sir; where there were any net rates.

Q. In the statement you have made up have you put in all points along the line?

A. No, sir.

Q. I will ask you to bring that book here at the next meeting.

A. I will do so.

Q. Any shipper could take advantage of the net rate that appears on the statement which you have brought here purporting to be an abstract of the book which contains the published and the net rates, and, in so far as the said book applies to shipments made by the Mitchell Coal and Coke Company, the Columbia Coal Mining Company, the Altoona, the Glen White, the Bolivar, the Millwood and the Latrobe?

A. Yes, sir.

Q. And this book from which this statement was taken contains all published and all net rates during the periods quoted for any shipper to avail himself of?

A. Not during the entire period. Not that particular book that you refer to.

Q. You have some record, have you not, that covers the entire period?

A. Yes, sir.

Q. What is it, outside of this book?

A. It was a different record kept in a different way.

Q. What is it; a book?

A. Yes, sir; a book.

Q. What is the book? How do you identify it?

A. I do not know what I would call it. It is simply a memorandum book.

Q. Is it similar in appearance to the book that we have been discussing?

A. No.

Q. How is it dissimilar?

A. Different shape. The tariff rates are not entered in that book.

Q. But the net rates are?

A. Yes, sir; the net rates that were quoted.

Q. Is it a leather back book?

A. I think it is a leather back book.

Q. Please bring that book before the Referee at the next meeting.

A. I will.

Q. In the first book mentioned and covering part of the period there are the published tariff rates and the net rates to the points mentioned in the book?

A. Yes, sir.

Q. Any shipper was entitled to avail himself of those net rates as they appeared in the book?

A. Yes, sir.

Q. Those published rates and those net rates are on this statement which you have brought with you?

A. Yes, sir.

Q. In the second book you have mentioned there appears only the net rates and not the tariff rates?

A. That is right.

Q. As to any of those net rates any shipper was entitled to avail himself of shipping at those rates?

A. He could have had the rates on application; yes, sir.

Q. Any shipper could have had them on application?

A. Yes, sir.

Q. Those net rates are in the statement which you have produced?

A. Yes, sir.

Adjourned until Saturday, June 1st, 1907, at 10 o'clock a. m.

Wednesday, June 5, 1907.

Present:

HON. THEODORE F. JENKINS, Referee.

JOSEPH F. GILFILLAN, Esq., for Complainant.

FRANCIS I. GOWEN, Esq., for Respondent.

Examination of J. G. Searles resumed.

By MR. GILFILLAN:

Q. You were looking up the last time the various designations under which this rate adjustment was made?

A. I overlooked that. I am looking that up now.

Q. You did give some information in regard to getting up that data. Please give us what you remember now?

A. They were designated as Terminal Expenses in some cases. I think pretty generally.

Q. Was it not sometimes overcharges?

A. Yes, sir. We always used the term overcharge on certain claims where there is a clear case of overcharge as between the tariff, and some error in applying the rate.

Q. I do not mean that. I am confining myself to the allowance from the published to the net rates. That was usually designated as Terminal Charges?

A. Yes, sir.

Q. Whether there was any work done at the Terminal or not?

A. Yes, sir.

Q. Please look it up and give us any other designation you had for that allowance?

A. I will do so.

Q. Have you brought with you those two books containing the published and the net rates?

A. No. I understood from Mr. Gowen this morn-

ing that you did not want me to bring them over this morning. I will send for the books.

(Books telephoned for.)

Q. If you recall at the last meeting, I asked you to give the freight rates upon coke and coal from Gallitzin to points around Altoona the same as you had given from Kittanning point?

A. Yes, sir.

Q. Will you please give them during the period of the action?

A. (Referring to statement.) Rates on bituminous coal from Gallitzin during the period from April 1st, 1897, to June 21st, 1899, were as follows:

- To Cresson 35 cents per gross ton.
- To Altoona 45 cents per gross ton.
- To Allegheny Furnace 45 cents per gross ton.
- To Duncansville 45 cents per gross ton.
- To Hollidaysburg 45 cents per gross ton.
- To Elizabeth Furnace 45 cents per gross ton.
- To Bellwood 45 cents per gross ton.

From June 22nd, 1899, to May 1st, 1901.

- To Cresson 35 cents per ton.
- To Altoona 36 cents per ton.
- To Duncansville 36 cents per ton.
- To Hollidaysburg 36 cents per ton.
- To Elizabeth Furnace 45 cents per ton.
- To Bellwood 45 cents per ton.

These are all per gross ton.

The rates on coke from Gallitzin during the period from April 1st, 1897, to December 31st, 1899, were as follows:

- To Altoona 46 cents per net ton.
- To Allegheny Furnace 46 cents per net ton.
- To Hollidaysburg 46 cents per net ton.
- To Duncansville 46 cents per net ton.

To Elizabeth Furnace 46 cents per net ton.
To Bellwood 46 cents per net ton.

From January 1st, 1900, to May 1st, 1901, as follows:

To Altoona 46 cents per net ton.
To Allegheny Furnace 46 cents per net ton.
To Hollidaysburg 46 cents per net ton.
To Duncansville 46 cents per net ton.
To Elizabeth Furnace 60 cents per net ton.
To Bellwood 70 cents per net ton.

From November 7th, 1900, to May 1st, 1901, the rate to Cresson was 40 cents per net ton.

Q. What do you mean by net ton?

A. 2000 pounds.

Q. Was that applied on coal as well as coke?

A. No.

Q. It was only applied on coke?

A. Yes, sir. Coal was 2240 pounds.

Mr. Gilfillan requests the statement furnished him by counsel for the defendant be marked for the purpose of identification. The statement was marked "Coke rates, 1897 to 1900, T. F. J. June 5, 1907".

Q. I show you a statement which you prepared and submitted here covering the coke rates during 1897, 1898 and 1899, and ask you what point did you mean to indicate as the starting point of road shipments for the rates you have mentioned on this paper marked "Coke Rates, 1897 to 1900, T. F. J., June 5th, 1907"?

A. It is not arranged geographically.

Q. I mean from what point?

A. From the Mountain region or Gallitzin.

Q. That is the Gallitzin region?

A. Yes, sir.

Q. I notice sometimes you say from Latrobe, un-

der the head of "destination"—for instance, on the top of the fourth page it has "Allentown, Pa. (from Latrobe)". That means that those shipments to Allentown of the top of page four of this exhibit were made from Latrobe, does it not?

A. No. The first three entries there show the rate from Gallitzin, and the fourth from Latrobe.

Q. And, if no mention is made of the starting point, then it means from Gallitzin?

A. Yes, sir.

Q. On this statement you have the tariff rates and the net rates? That is what you call it, is it not?

A. Yes, sir.

Q. You have for the Mitchell Coal and Coke Company, the Columbia Coal Mining Company and the Glen White Coal and Lumber Company?

A. Yes, sir.

Q. You have none for the Altoona Coal and Coke Company here?

A. No, sir.

Q. Why was that?

A. I assume that there were no shipments, no rates quoted.

Q. You know that the Altoona Coal and Coke Company produces coke, do you not?

A. Yes, sir.

Q. And that it ships it east?

A. Yes, sir.

Q. Is it your thought that they sold their coke to the Columbia Coal Mining Company?

A. They might have. This statement shows the rates that were quoted the Columbia Coal Mining Company.

Q. From Gallitzin?

A. From Gallitzin or other points in the Gallitzin region.

Q. The Altoona Coal and Coke Company is in the Gallitzin region so far as coke production is concerned?

A. Yes, sir. It takes the same rate.

Q. Have you prepared a statement showing the published and the net rate as to coal shipments?

A. Yes, sir.

Q. Have you it with you?

A. No, sir.

Q. Will you bring that statement the next time?

A. I will.

Q. You have that prepared?

A. I have that prepared, yes, sir.

Q. That shows from Clearfield and Latrobe regions?

A. Where there were any rates quoted from the Latrobe region, it will show it.

Q. As I understand it, you are preparing a statement covering the published and net rates for the shipment of coal both from the Latrobe region and from the Clearfield region when any such were quoted?

(Book produced by witness.)

A. Yes, sir.

Q. That book will show when they were quoted also, will it not?

A. No, sir. One of those books would not show the actual date that the rate was quoted, but it will show that they were quoted during a certain period.

Q. When did this rate adjustment begin?

A. The book which you have referred to here so many times begins April 1st, 1898.

Q. When did you abolish this system of shipping at rates different from the published rates?

A. I am not quite clear whether this extends up to April 1st, 1900, or not. We can tell by looking at it.

Q. On the first page inside the cover, this book is designated, "Rates per 2240 pounds of bituminous coal, carloads, from Clearfield region, taking effect April 1st, 1898, and not good after March 31st, 1899"?

A. Yes, sir.

Q. Was that the beginning of rate allowances?

A. Under this book.

Q. Outside of this book?

A. Oh, no. We made rate allowances prior to this.

Q. Can you tell from memory when this system of rate allowances was begun?

A. No; I could not.

Q. Was it prior to your entry into the position which you now occupy?

A. That is going back into ancient history.

Q. The printed slip on the left hand side of the page contains the published rates, does it not?

A. Yes, sir.

Q. And that first left hand column where the writing is in ink under the printed slip refers to the published rate, does it not?

A. No. The published rate is not shown there. It shows a rate we quoted. I did not notice that before.

Q. So that then the published rate is in the printed slip?

A. Yes, sir.

Q. The net rates and various companies appear in ink?

A. Yes, sir. Except where they are checked. Instead of entering the figures they were in some cases simply checked as the rates that had been quoted.

Q. For instance, I notice here Sunbury on the printed slip, \$1.10?

A. Yes, sir.

Q. Then to Sunbury for the Bracken Coal Company was eighty cents?

A. Yes, sir.

Q. To Sunbury for the Bennington, the Berwind-White, the Columbia and all those other companies eighty cents if they chose to ship there?

A. If they applied for a rate or had shipments, that rate would have applied.

Q. Referring again to Sunbury and the tariff rate

of \$1.10, I notice that R. E. Brown and Company has a tick opposite Sunbury. What does that mean?

A. That rate was quoted them.

Q. The eighty cent rate?

A. Yes, sir.

Q. Wherever the tick mark appears upon the same line with the figures it means that the same figures were quoted?

A. Yes, sir.

Q. Referring to the published rate to Milton, \$1.10, there is the figure of eighty cents to the Bracken Coal Company, a tick as to R. A. Brown and Company, a tick as to Duncan, Spangler and Company, a tick as to the International Coal Company and a tick as to the Mulholland Coal Company, and then a tick and figure eighty as to Pilling and Crane.

A. That is to another point. That was to Montandon.

Q. Below the printed slip there is written in ink South Danville, Pine, McElhatton, North Bend, Pa., and D. S. and S. R. R., via Derringer Junction to Drifton?

A. That does not show the tariff rates. That shows we quoted the Mitchell Coal and Coke a rate of \$1.40 a ton to Drifton on supply coal for the D. S. and S. Railroad, most likely.

Q. As to these last mentioned places, which I have said were written in ink on the page, there appears to be no published rate.

A. I am not quite clear whether we had a published rate to Drifton at that time.

Q. What about the other places, North Bend, McElhatton and several others?

A. I don't know why it happened. I hadn't noticed it before.

Q. As I understand it, the statement that you are making here showing the published rate and the net rate for coal as affecting points shipped to by the

Mitchell Coal and Coke Company as well as the other four or five named companies, are taken from this book and the other books in connection with it?

A. Yes, sir.

Q. When you quoted the Mitchell Coal and Coke Company a rate for coal to any given point in the eastern market, any other shipper could go and get the same rate, could he not?

A. Yes, sir.

Q. If he applied?

A. Yes, sir.

Q. And the same rate would be given to any of the five mentioned companies, that is, the Altoona, Glen White, and so on?

A. Yes, sir.

Q. As I understand it, the lateral allowance to the Glen White, to the Altoona Coal and Coke Company, to the Latrobe, to the Bolivar, and to the Millwood, were allowed on all coal and coke produced, except coal or coke purchased by the Pennsylvania Railroad Company, or by corporations controlled by the Pennsylvania Railroad Company on shipments east?

A. I think so. Those rates on the printed slip are the rates from the Clearfield region.

Q. Where is your book as to the Latrobe region?

A. There is nothing in there. If there were any rates quoted from the Latrobe they would be noted here specially.

Q. If there were any quoted from Latrobe?

A. Yes, sir.

Q. Your transmittal letter-book will show, in some instances, will it not, that quotations from Latrobe and Clearfield were the same?

A. It might.

Q. Do you not know that there are at least one or two instances?

A. Yes, sir. I think so. We have not been able to dig that out yet.

Q. You have testified, as I understand it, the last time, giving the dates when the rates were made similar from Latrobe and Clearfield?

A. Yes, sir.

Q. You furnished these letters in response to my request? (Referring to a letter dated Philadelphia, February 12, 1897, from J. G. Searles to Mr. O. A. Knipe, and also a letter dated April 15, 1898, from said Searles to said Knipe, and also letter of April 6, 1899, from said Searles to said Knipe.)

A. Yes, sir. I wish to say, at the time this letter of February 12, 1897, was written, the tariffs did not show the net rates at which the auditor would collect the freight charges. This letter was, therefore, written as a guide to him as to the rates at which he was to render bills to the consignees or the shipper of this coal.

Q. That explanation is as to all the letters you refer to?

A. Yes, sir.

Q. When you say the tariffs did not show it, the tariffs never do show it, do they?

A. They do now.

Q. But they did not during the period when rate allowances were made?

A. No.

The letters produced by the witness offered in evidence and read as follows:

“Philadelphia, February 12, 1897.

Mr. O. A. Knipe,

A. C. F. R.

Dear Sir:—

Taking effect this day, the rail proportions of through rates on Bituminous coal for other than gas purposes, shipped via Harsimus, South Amboy, or Greenwich, to points beyond, will be as follows per 2240 pounds, f. o. b.—

J. G. Searles.

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Via	Clearfield Region	GC&CRR, via State Line	Latrobe Region	Westmoreland Region	PV&CRy
Harsimus	\$1.40	\$1.45	\$1.42	\$1.65	\$1.80
South Amboy	1.35	1.40	1.37	1.60	1.75
Greenwich, inside Capes	1.20	1.20	1.35	1.45	1.60
Greenwich, outside Capes,	.88	1.00	.90	1.25	1.40

Shipments consigned via Greenwich to points in Chesapeake Bay or within the Chesapeake Capes will be charged same as coal for points inside Delaware Capes.

Yours truly,

(Signed) J. G. Searles,

G. F. A."

"Philadelphia, April 15, 1898.

Mr. O. A. Knipe,

A. C. F. R.

Dear Sir:—

Taking effect April 1, 1898, the rail proportions of through rates on Bituminous coal, for other than gas purposes, shipped via Harsimus, South Amboy, or Greenwich, to points beyond, will be as follows per 2240 pounds, f. o. b.—

	Clearfield Region	GC&CRR, via State Line	Latrobe Region	Westmoreland Region
Harsimus	\$1.25	\$1.45	\$1.27	\$1.55
South Amboy	1.20	1.40	1.22	1.50
Greenwich, inside Capes	.90	1.20	1.05	1.30
Greenwich, outside Capes	.75	1.00	.77	1.12

Shipments consigned via Greenwich to points in Chesapeake Bay or within the Chesapeake Capes will be charged the same as coal for points inside the Delaware Capes.

While these rates are to take effect from April 1st, I presume it is too late now to correct the bills for shipments made April 1st to April 9th, inclusive, and we shall have to adjust these through the overcharge account.

Yours truly,

(Signed) J. G. Searles,
Coal Freight Agent."

"April 6, 1899.

Mr. O. A. Knipe,
A. C. F. R

Dear Sir:—

I beg to advise you that, taking effect April 1, 1899, the rail proportions of through rates on Bituminous coal shipped via Harsimus, South Amboy or Greenwich to points beyond, will be as follows, per 2240 lbs., f. o. b.—

	From Clearfield Region	From G. C. & C. R. R. via State Line	From Latrobe Region	From Westmoreland Region
To Harsimus	\$1.00	\$1.15	\$1.00	\$1.25
“ South Amboy	.95	1.10	.95	1.20
“ Greenwich, inside Capes	.80	.80	.80	1.05
“ Greenwich, outside Capes	.65	.77	.65	.90

Will you please arrange accordingly and oblige,

Yours truly,

(Signed) J. G. Searles,
C. F. Agent."

THE WITNESS: Those are rates at which the freight charges were collected from the consignees or shippers.

Q. Then the settlement was made from those figures to the quoted rate?

A. Those were practically the tariff rates.

Q. I understood you to say before the settlements were made from them to a lower rate?

A. If there were any lower rates.

Q. There were on all those, were there not?

A. I think there were.

Q. This book that is before you, which has been referred to as book labeled on the inside page, "Rates per 2240 pounds of bituminous coal, carloads, from Clearfield Region, taking effect April 1, 1898, and not good after March 31, 1899", is the only document which would show the published and the quoted rates, is it not?

A. Yes, sir.

Q. Then the same is true of the other books you have here on the same subject, but of a later date?

A. No. The other books do not show the same information.

Q. How do they differ?

A. I will explain to you when I have those books. During a portion, if not all of the period, the freight charges on tidewater coal were collected by a weekly bill from the auditor's office after the coal was shipped over the piers loaded into boats. Those letters gave the rates at which the auditor collected those freight charges.

Q. In other words, these letters showed the net rates for the character of shipments which are mentioned here?

A. No, sir. Not the rates at which we settled finally.

Q. Do you mean these letters showed what were really the equivalent of the tariff rates?

A. Yes, sir.

Q. And then the settlements would be made to the net rate later on?

A. Yes, sir.

Q. Can you give us the net rates of the period covered by these letters?

A. I suppose I could, but it seems to me that is hardly necessary, because we will show that in the statements we are preparing as to the rates at which we settled freight charges.

Q. The statement will show the net rate to Harsimus and Greenwich Point?

A. No; it would not show Harsimus, because Harsimus is not covered by your action here. We do not handle the coal at Harsimus; that is a private pier.

Q. As I understand it, you are preparing a statement covering published and net rates on coal?

A. We are preparing a statement showing the tariff rates and the net rates at which we settled with those various parties mentioned in your action.

Referring to book marked on the outside cover "1898", page 32, the first entry is simply an entry of the laterals allowed to the Altoona Coal and Coke Company.

Q. Does not this book show the published rate and the net rate the same as the previous book that we referred to?

A. No, sir. (Page 54) Bolivar Coal and Coke Company, on December 16, 1898, we quoted them a rate to Philadelphia of \$1.15 a ton from Bolivar, on bituminous coal. That is the character of the information that is in this book.

Q. This book contains what is really the quoted rate?

A. That is right.

Q. You could find the tariff rate in the printed books?

A. You could find it a great deal quicker from the printed tariff itself.

Q. What is the other book you have here, on the first inside page of which there appears "Coke and anthracite coal. 1898"?

A. This book contains the rates quoted on coke.

This shows a lateral allowance to the Bolivar Coal and Coke Company of fifteen cents a ton on coke.

Q. Was not the testimony that the Bolivar was ten cents?

A. At one time it was fifteen cents.

Q. In 1898 it was fifteen cents?

A. Yes, sir.

Q. How long did that continue?

A. I cannot tell you now. I had a memorandum of it here.

Q. Have you any other books which contain a record of quoted rates for either coke or coal?

A. No, sir.

Q. Those are all the books on that subject?

A. Yes, sir; that is all.

Q. These three books?

A. I do not know. We did not send over the books for the entire period. I thought you simply wanted to see what we had. We may have more of these books covering a period that extends beyond the period covered by these.

Q. You have none for 1899 and 1900 here, have you?

A. No, sir.

Q. Look and see if you have any for 1899, 1900 and 1901.

A. We have not any for 1901, I am sure. I will look for 1889 and 1900.

Q. Have you no book showing the quoted rates prior to April 1, 1898?

A. Nothing of this kind. (Referring to large book.)

Q. What kind?

A. They would be like this. (Referring to small book.)

Q. I would like the book from April 1, 1897, which would probably be one book before this (large book),

and then the one or two books subsequent to the last book.

A. The first page in this large book says, "Taking effect April 1, 1898, and not good after March 31, 1899." Later on in the year we found it necessary to make change in some of these rates, and to the points which were affected we started a new record here, which you will observe, beginning August 1, 1898, and not good after March 31, 1899. There were two periods there. We found it necessary on the first of August, 1898, to make some further changes in the rates. I am not quite clear whether we changed the tariffs or changed the net rates.

Q. When?

A. The first of August, 1898. The printed slip would show whether the tariff was charged.

Q. And whether the net rates were changed would be shown by the ticks and the ink figures?

A. Yes, sir.

Q. You will bring the book preceding this—

A. This is the only book of this same character that we have.

Q. You have books like this (small book) afterwards and before?

A. Yes, sir.

Q. Please bring them next time from April, 1897, until May 1, 1901.

A. I will do so.

Q. The lateral allowances made to the Altoona Coal Company, the Glen White, the Millwood, the Latrobe and Bolivar were made regardless of destinations, except as to coal sold to the Pennsylvania Railroad or corporations controlled by it?

A. Yes, sir. I understand you refer to eastbound business?

Q. The lateral applied to Bolivar was westbound?

A. No; I think I testified that that applied only to

eastbound shipments, the lateral. Latrobe, I think, got it on both east and westbound.

Q. What was Mr. Joyce's official position in March and April, 1897?

A. I would be obliged to look that up. I cannot recollect the exact date when the change was made. Mr. Joyce's title was changed soon after Mr. Frank Thomson became president.

Q. During the year 1897 had Mr. Joyce charge of the coal freight rate department?

A. In a general way, yes. He was my superior officer.

Q. He was the head of the department?

A. Yes, sir.

(Examination of witness suspended.)

J. L. MITCHELL, recalled.

By MR. GILFILLAN:

Q. Did you meet Mr. Joyce in 1897?

A. Yes, sir.

Q. In what month?

A. In the latter part of April and fore part of March.

Q. You made a settlement, I think, on some rate questions, did you not?

A. Yes, sir.

Q. Tell the Referee what Mr. Joyce said to you and what you said to him as affecting the question of your future rates.

A. I had a claim for shipments on coal and coke running several years up to the first of March. I settled it up to the first of March, 1897. The claim had been running a good while. I had been trying for a long time to make an adjustment with Mr. Searles, and finally it got to a point I could not get anything from him, and he returned my papers. I had intended to

bring a suit then for this claim, and I met John Bradley, of the Sterling Coal Company, and told him about it, and he advised me not to do it, and leave him talk to Joyce, and a few days afterwards Mr. Joyce sent to me, and I went to see him and we went over the matter, and I figured that the claim amounted to a good deal over \$200,000 to get the same amount of money at the same rate per ton shipped as my nearest competitors, Taylor & McCoy, and finally Mr. Joyce asked me the least I would take. I said I would take \$100,000 to settle it then. He told me to come back a few days afterwards, and I went in to see him, and he says, "Now, Mr. Mitchell, I have got leave to settle this claim for less than \$70,000, and if you will take it at that I will guarantee you that from this on you will get as good treatment and as good rates as anybody else shipping on the road." (Among other things, he advised me to move my office to Philadelphia so I would be in touch with the people and they could notify me when anything was coming up, any business or lower rates. I settled with him that day for \$69,500. That was in March, 1897.)

Q. That was with Mr. Joyce?

A. With Mr. Joyce, the General Freight Agent, I think he was, at that time.

Q. Was he the man shippers dealt with on rate questions?

A. We usually dealt with Mr. Searles, but I couldn't make any adjustment with Mr. Searles.

Q. Mr. Joyce was Mr. Searles' superior at that time?

A. Yes, sir.

Q. And Mr. Joyce told you you would get in the future as low rates and as good facilities as anybody on the road?

A. Yes, sir.

Q. And that they would notify you if there were

any additional concessions of any kind made to any shipper?

A. He advised me to come here where I could be in touch so I could be notified, and that he would assure me as good rates as anybody else.

Q. And on the strength of that you made the settlement for \$69,500.

A. That was part of the consideration, yes, sir. Releasing that claim.

Cross-examination.

By MR. GOWEN:

Q. When did you cease to have any interest in the Columbia Coal Mining Company?

A. I didn't look for that date, but I think it was in 1900 when I sold the stock.

Q. Can you give us the year?

A. No, I cannot, but I will get it for you. I cannot give the exact date.

Q. What was the extent of your interest in that Company?

A. I think I had one-twelfth.

Q. What connection had you with the management of it?

A. I was only a director in the Company.

Q. And remained so up until 1900, did you not?

A. I cannot be positive about that. We did not hold very many meetings.

Q. You remained a director until the time you disposed of your stock, did you not?

A. I think so, but I am not positive.

Q. You can ascertain?

A. Yes, sir; I will ascertain and let you know.

Adjourned until Thursday, June 13, 1907, at 11 a. m.

Thursday, June 20th, 1907, 3 p. m.

Present:

HON. THEODORE F. JENKINS, Referee.

JOSEPH F. GILFILLAN, Esq., for Complainant

FRANCIS I. GOWEN, Esq., for Respondent.

Examination of J. G. Searles resumed.

By MR. GILFILLAN:

Q. Have you brought with you the statements showing the coal and coke sold to the Columbia Mining Co. by the Latrobe Coal Co. during the period of the action, which coal and coke was shipped to various consignees to points within and without the State?

A. I have brought with me the statements prepared from the statements they made.

Q. With that modification, you answer the question, yes?

A. Yes, sir.

Q. Let me have the statements of coal shipments from Latrobe?

(Witness produced statements.)

Q. Do you know how this coal was sold by the Latrobe Coal Mining Co. to the Columbia Coal Mining Co., whether it was sold f. o. b. the mines or at a delivered price at point of destination?

A. I do not know, but I assume from the fact that they stated that these shipments were made account of the Columbia Coal Mining Co., that they were sold f. o. b. cars at the mines.

Q. These statements show the consignees of the Columbia Coal Mining Co. and the destinations of the coal?

A. I do not think in all cases they show the consignees. They show the destinations, I think.

(Witness produced statement as to the Latrobe Co.)

(Witness shown paper entitled "Shipments of bituminous coal from Latrobe Coal Co., account of Columbia Coal Mining Co.") That is a statement that you prepared, is it not?

A. Yes, sir. It was prepared in my office.

Q. (Witness shown statement entitled "Shipments of coal from Latrobe Coal Co. account of Columbia Coal Mining Co.") That statement was prepared by you or under your supervision?

A. Yes, sir.

Statements offered in evidence and marked "Shipment of coal from Latrobe Coal Co. on account of Columbia Coal Mining Co., T. F. J., June 20, 1907.

"Shipments of coke from the Latrobe Coal Co. on account of Columbia Coal Mining Co., T. F. J., June 20, 1907."

Q. The names of the consignees are not contained in these two statements that I have just referred you to?

A. No.

Q. You, however, can get the names of the consignees by reference to the paper marked "Latrobe Coal Co., state coal and coke, T. F. J., April 30, 1907", can you not?

A. Yes, sir.

Q. I call your attention to what appears in ink at the bottom of the third page of the statement marked "Shipments of coke from the Latrobe Coal Co. on account of the Columbia Mining Co., June 20, 1907", which reads as follows: "No through rate to White-stone Landing, N. Y. Tariff rate to Jersey City \$1.95". By that you mean that you had no rate of the railroad that covered the point beyond Jersey City on that shipment?

A. Yes, sir.

Q. Do you know how it was taken care of afterwards?

A. Probably charged at the local rate on the Long Island Railroad from Jersey City to Whitestone Landing, which would be in addition to the rate that we charged to Jersey City.

Q. I call your attention to the third page about the middle, which says, "Lebanon, Pa., \$1487.90", and then off of the column on the right hand side after 4/24, "\$1.55, five off". What does that mean?

A. That means 5 cents per ton off of that rate.

Q. Wherever the figures in this column with the words "Settlement" written at the top appears, it means that much per ton off the tariff rate?

A. Yes, sir. Unless the rate at which settlement was made was noted. For instance, in May 1899, Lebanon, Pa., \$1859.10 tariff \$1.55, settlement \$1.50.

Q. I call your attention to the next to last page of said paper, and I notice under the column with the word "settlement" at the top, you have got "To Mechanicsville, N. Y.", in three places. What is the purpose of that insertion?

A. That means that we had no through rate to Capelton, Pa., for instance, and the shipment was charged at the rate to Mechanicsville, which was \$2.55 per ton.

Q. I notice here on the same page an entry "Laurel Hill, L. I., N. Y., \$5410.10, \$2.25 to Jersey City only." That means that you only had your tariff rate to Jersey City, and you had no tariff rate to Laurel Hill, Long Island?

A. Yes, sir.

Q. At \$2.25 a ton?

A. Yes, sir.

Q. That was the tariff rate?

A. Yes, sir.

Q. And there was nothing off on that Laurel Hill shipment?

A. No, sir.

Q. I show you paper marked "Shipment of coal from Latrobe Coal Co. on account of Columbia Coal Mining Co., T. F. J., June 20, 1907", and on the second page thereof I find the entry under December, 1898, "Greenwich, Pa., 130.65 tons. You have then in the first column on the right hand side "inside \$1.05". That is \$1.05, is it?

A. Yes, sir.

Q. "Outside 77 cents"? Is that correct?

A. Yes, sir.

Q. That means, I suppose, it was \$1.05 tariff rate inside the Capes and 77 cents tariff rate outside the Capes?

A. \$1.05 on coal re-shipped from Greenwich Piers for destinations inside of the Delaware Capes—\$1.05.

Q. And 77 cents on coal re-shipped for destination outside the Delaware Capes?

A. Yes, sir.

Q. That distinction of inside and outside the Capes and the different net rates for re-shipments inside and outside the capes, also applied to the Capes at the end of the Chesapeake, did it not?

A. As to shipments over Baltimore Piers, do you mean?

Q. Yes.

A. Yes, sir.

(Statement identified by witness offered in evidence by Mr. Gilfillan.)

Q. I hand you statement entitled "Shipment of bituminous coal from the Altoona Coal & Coke Co., account of the Columbia Coal Mining Co., April, 1897. to May 1, 1901", and ask you if that statement was prepared by you or under your supervision?

A. Yes, sir.

The statement identified by witness, offered in evidence and marked "Shipments of coal from the Altoona Coal & Coke Co. on account of the Columbia Coal Mining Co., April 1, 1897, to May 1, 1901, T. F. J., June 20, 1907."

Q. I call your attention to some writing in ink on the third page of the statement just referred to, as follows: "Memo, bituminous coal from Clearfield Sept. 1898, Arlington, Staten Island to South Beach, through rate \$1.90 P. R. R. to Staten Island Junction \$1.50, Grassmere Staten Island to Tottensville, Staten Island through rate \$2.05 P. R. R., \$1.50." By that you mean, I suppose, that the P. R. R. carried it to Staten Island Junction for \$1.50?

A. Yes, sir. That was our proportion to Staten Island Junction.

Q. I call your attention to the fifth page of this statement last referred to, and ask you what is meant by \$1.30 in the column "Tariff rate" and \$1.30 in the "Settlement rate"?

A. The tariff rate was charged. There was no allowance made from that.

Q. Why did you specify that, when you did not do it in any other cases?

A. It is possible that the shipment was charged at the local rate to South Amboy. At that time it was our custom to issue through rates to New York Harbor via South Amboy, and we made a notation on the tariff, printed a clause on the tariff stating that an allowance of 40 cents per ton would be made for boat freight and discharge.

Q. The entry on that page, referring to page 5, "Henrietta Coal Mining Co., South Amboy, N. J., 1181 tons, at \$1.70 tariff rate", and \$1.30 settlement rate, meant that there was 40 cents deducted from the \$1.70 for the boat rate? Is that correct?

A. No; I cannot say that that was. The \$1.30 was

probably the proportion to South Amboy on the through rate to New York Harbor. Just how the shipment was charged, whether it was charged at the local rate to South Amboy or at the through rate published to New York Harbor, I cannot tell. I had not noticed that before, but it was probably charged at a higher rate and we authorized the auditor to settle at the \$1.30. At that time the through rate to New York Harbor was \$1.70 per gross ton. That was also the local rate to South Amboy, \$1.70 per ton; that is, by local delivery.

Q. But for the through rate it was \$1.70 to New York?

A. The through rate was \$1.70, less 40 cents per ton for boat rate and discharge. That is provided for at the foot of the tariff. I refer to tariff Interstate Commerce Commission A, No. 430, issued March 19, 1900, taking effect April 1, 1900.

Q. On that same page you have a little asterisk or star that probably notes that. It says "boat freights allowed". That 40 cents is probably boat freight?

A. Yes, sir; that is what he means, that the shipment was probably charged at \$1.40 per ton, and the 40 cents provided for by the tariff was refunded.

Q. The same thing occurs in September, Henrietta Coal Mining Co., South Amboy, 1737 tons and eight hundredths, \$1.30 under the tariff column and \$1.30 under the settlement column. There is no little star there, but the same remark applies?

A. Yes, sir.

Q. Do you know what these lead pencil X's stand for, if anything?

A. No, sir. I do not think they signify anything.

Q. I hand you a paper marked "Altoona Coal & Coke Co., interstate shipments of coke from April 1897 to May 1901, T. F. J., June 20, 1907," and ask you if that statement was made by you or under your supervision?

A. I think that statement was made in Mr. Gowen's office and we put the tariff rates in there and the settlements.

Paper identified by witness, offered in evidence by Mr. Gilfillan.

Q. You put the tariff rates and the settlement rates as they appear?

A. Yes, sir.

Q. In that statement all the coal and coke was shipped on account of the Columbia Coal Mining Co., except where a red ink line has been drawn through the shipments, and in such cases the shipments were on account of other parties? Is that right?

A. Yes, sir.

Q. I showed you paper marked "Altoona Coal & Coke Co., state shipments of coke from April 1897 to May 1901, T. F. J., June 20th, 1907", and ask you if you know where that statement was made?

A. The same reply with respect to that as to the first above preceding paper.

Q. It was made up in Mr. Gowen's office.

A. Yes, I think it was made in Mr. Gowen's office.

Q. You mean by Mr. Gowen, the attorney for the railroad company?

A. Yes, sir.

Statement identified by witness, offered in evidence by Mr. Gilfillan.

Q. You put the figures in this statement showing the tariff rate and the settlement rate?

A. Yes, sir.

Q. In this particular statement last mentioned the tariff rate is on the left hand side of the column and the settlement rate is on the right hand side?

A. Yes, sir.

Q. And all the coke therein mentioned was shipped on account of the Columbia Coal Mining Co., except

where a red ink line has been drawn through the shipment, and in such case the shipment is on account of other parties?

A. Yes, sir.

Q. On that coal and coke so shipped both by the Latrobe Coal Co. and the Altoona Coal & Coke Co. as contained in these statements which have been shown to you and marked today, the Latrobe Coal Co. and the Altoona Coal & Coke Co. got their lateral allowance over and above the settlement allowance to the Columbia?

A. Yes, sir.

Q. Can you from memory give us the periods and the lateral allowances made to the Altoona, the Glen White, the Latrobe, the Millwood and Bolivar during the period of this action?

A. I have already testified to that. I cannot give it from memory.

Q. The laterals were allowed on all coal and coke produced and shipped whether by the Altoona, Glen White, Millwood, Bolivar or Latrobe companies, or by their consignees, to all points east of Lewistown Junction at least?

A. There was no allowance made whatever to the Bolivar Coal & Coke Co., except on coke. There was no allowance on coal.

Q. With that exception?

A. There was no allowance made to the Millwood Coal & Coke Co. on coke because they did not produce any.

Q. Was there the lateral allowance which you have heretofore referred to in your testimony as having been paid to the Altoona Coal & Coke Co., paid to the Altoona Coal & Coke Co. on all coal and coke produced by the Altoona Coal & Coke Co. and shipped to points east of Lewistown Junction, either by the Altoona Coal & Coke Co. or by their consignees?

A. No, sir; they shipped a great deal of coal for their own use on which they got no lateral.

Q. That was the company supply?

A. Yes, sir.

Q. Outside of the Pennsylvania Railroad supply coal, was the allowance made as I have indicated in my question?

A. I should designate these as commercial shipments, and they were allowed.

Q. Did the Glen White Company receive the lateral allowance on coal and coke heretofore referred to by you on all coal produced by them and shipped for commercial purposes either by themselves or by some consignee who shipped from the mines?

A. They did.

Q. By commercial coal you mean all coal outside of Pennsylvania Railroad Supply coal, do you not?

A. Yes, sir.

Q. Did the Latrobe Coal Company receive the lateral heretofore referred to by you in your testimony on all commercial coal produced and shipped from the mines of the Latrobe Coal Co., either by it, the Latrobe Coal Co., or some other consignee?

A. I think they did to all the eastern points.

Q. What do you mean by eastern points?

A. I mean points east of Lewistown Junction.

By Mr. GOWE.

Q. That same qualification should be made as to the Glen White shipments?

A. Yes, sir.

Q. The lateral only applied to the eastern shipments?

A. Yes, sir.

By Mr. GILFILLAN:

Q. Did the Millwood Coal & Coke Co. receive the lateral allowance, heretofore referred to by you on all commercial coal produced and shipped by them, either

directly or by some consignee, who purchased the coal f. o. b. the mines?

A. Yes, sir; to the eastern points.

Q. Points east of Lewistown Junction?

A. Yes, sir.

Q. Did the Bolivar Company receive the lateral heretofore referred to by you, whatever they were, on the coke produced by it and shipped either directly by the Bolivar Co. or by some other consignee who purchased f. o. b. the mines?

A. I think so.

Q. That is true of both coke and coal in all cases, is it not?

A. No. We made no lateral allowance to the Bolivar Coal & Coke Co. on coal.

Q. They did not ship any, did they?

A. Yes, they shipped a little coal.

Q. The Altoona Coal & Coke Co. had the lateral allowance on the coke that was produced by it no matter who made the shipment, or where it went?

A. Yes, sir.

Q. Providing it went to points east of Lewistown Junction?

A. Yes, sir.

Q. The same is true of the Glen White Coal Co.?

A. Yes, sir.

Q. The same is true of the Millwood Company?

A. No; your question was about coke. The Millwood Company shipped coal.

Q. No coke?

A. No coke.

By THE REFEREE:

Q. You say they did not ship any coke, but they did ship coal?

By MR. GILFILLAN:

Q. As to the Latrobe Co. they received laterals on

coke shipped to points east of Lewistown Junction on all coke produced by the Latrobe Co., whether shipped by it or somebody else?

A. Yes, sir; produced from the Latrobe Coal Co.'s mines.

Q. Those laterals ran during the entire period that you have heretofore testified the laterals were allowed?

A. Yes, sir.

Q. In other words, the laterals on coal and coke were allowed to those various companies, regardless of the time of shipment or the destination?

A. During the period that I testified that we were making them the lateral allowance.

Q. With that exception, that is, during the period when the allowances were made, the companies were allowed the lateral allowances on all coal and coke as heretofore testified to by you, regardless of destination and regardless of the time within the period when the shipments were made? Is that correct?

A. Yes, sir.

Q. These lateral allowances were made to these various companies on the coal which the company transported as a common carrier?

A. Yes, sir.

Q. Do you know anything about John Lloyd receiving 20 cents per ton more for the Pennsylvania supply coal than what the other men received?

Objected to. Objection withdrawn.

A. I do not know anything about it.

Q. Do you know whether lateral allowances were made for Pennsylvania supply coal to the Altoona Coal & Coke Co., the Glen White Coal & Coke Co., the Bolivar, Millwood, Latrobe, or any of them?

A. I know that we made no lateral allowance at all on supply coal for a railroad company.

Q. Do you know, or do you not know whether lat-

eral allowances were made to either of the five companies just named, that is, the Altoona, Glen White, Millwood, Bolivar and Latrobe companies for Pennsylvania supply coal that was purchased from them?

A. I know that I never made them any lateral allowance, and I do not think that anybody else would.

Q. You are sure of that, that no lateral allowance ever went through your office?

A. I am quite sure.

Q. Then as I understand it, the published tariff rate was reduced in the first instance by the difference between the published rate and the net or quoted rate?

A. To some points it was.

Q. To some points, and to some people?

A. Yes, sir.

Q. Then, so far as the Altoona, the Glen White, the Millwood, the Bolivar and Latrobe were concerned, the freight rate was further reduced by the lateral allowances made to those companies?

A. Practically, yes, sir. But, there was a great deal of other coal that was shipped, on which we made no allowance from the tariff rate other than the lateral.

Q. What was the rate for Mitchell on his Long Island supply coal? When I say Long Island supply, I mean his coal for the supply of the Long Island Railroad, the rate to Jersey City?

A. I do not know whether I could tell that positively, or whether he got any rate. I do not find any rate here during the period from April 1, 1897, to March 31, 1898.

Q. I am speaking about April 1st, 1898. During the greater period of this action, was not Mr. Mitchell charged \$1.35 on the coal which he shipped for the supply of the Long Island Railroad Co., \$1.25 being the rate to Jersey City floats?

A. I really cannot answer that question now.

Q. Please look this question up. Find out for the

next meeting if you did not charge Mitchell \$1.35 to Jersey City f. o. b. floats on coal that was not for supply of the Long Island Railroad and whether at the same time you did not give a rate to the New York Sugar Refining Co., Long Island City, \$1.10, which included 15 cents floatage, making the net rate 95 cents to Jersey City?

A. I do not think I ever gave the Sugar Refinery a rate.

Q. Was that not what they paid?

A. I do not know.

Q. Look it up.

A. How can I tell shipments to a given consignee? Who were the shipments made by, and how can I locate them?

Q. Did you not make any bills or send anything to the accounting department for the Sugar Refinery coal?

A. Settlement with the Sugar Refining Company?

Q. Or their representatives?

A. No, sir.

Q. Did you ever make any settlements with the Atlantic Refining Company?

A. No, sir; I do not think I did.

Q. Have you got that big red book here?

A. Yes, sir. (Book produced.)

Q. Do you not know that you charged Mitchell a dollar freight to Philadelphia when coal was transported for somebody to the Atlantic Refining Co. for 80 cents?

A. I do not know. I could not tell who the coal was shipped to. The statements that we have made up show that we made settlement with Mr. Mitchell on coal to Greenwich Piers, Philadelphia, or to somebody else.

Q. Do you not know that the coal was shipped to the Atlantic Refining Company and 80 cents freight was paid on it while Mitchell was charged a dollar?

A. I do not.

Q. Look at the book and see whether you cannot refresh your memory?

A. There is nothing in here that would indicate anything of that kind.

Q. Do you know who the shippers were?

A. I do not know. We have two or three hundred shippers and I could not remember the consignees. We now have about six or seven hundred.

Q. Refer to your book and look for the shipments account of David E. Williams?

A. They are not connected with this suit.

Objected to. Question withdrawn.

Q. You have shippers, the Duncan, Spangler Co., have you not?

A. Yes, sir.

Q. David E. Williams?

A. Yes, sir.

Q. The Sterling Coal Co.?

A. Yes, sir.

Q. Morrisdale Coal Company?

A. Yes, sir.

Q. They were all shippers during the period of this action?

A. Yes, sir.

Q. Have you looked up your records to see whether the rate adjustments that you made, that is to say, the allowances which were made from the published to the net rates, had any other name besides terminal charges?

A. Yes, sir. Terminal expenses, I think.

Q. That is to say, you sometimes wrote that these rate adjustments were terminal expenses and sometimes terminal charges?

A. Yes, sir.

Q. What other names had you?

A. Overcharges.

Q. Did you use the word "Overcharge" in connection with the rate allowance?

A. I think we did. I do not recall.

Q. What other names?

A. I think that was all.

It is admitted that the tonnage of coal and coke referred to in the statements produced by the defendant from the Altoona Coal & Coke Co., the Glen White Coal & Coke Co., the Millwood Coal & Lumber Co., the Bolivar Coal Co., and the Latrobe Coal Co. contain tonnage that was carried by the Penna. Railroad as a common carrier, except as to supply coal of the Pennsylvania R. R. Co., or, other lines embraced within its system therein mentioned.

Q. Please familiarize yourself with the net rate to the Sugar Refinery, Long Island, Burns Bros., 38th St., N. Y., Atlantic Refining Co., Philadelphia, and the Brooklyn Water Works?

A. I will do so.

J. L. MITCHELL, recalled.

By MR. GILFILLAN:

Q. At the last session I was asking you about what Mr. Joyce said to you at the time of the settlements which were made some time in March, 1897. You have heretofore testified that you knew or heard that the Glen White Coal Co. and the Altoona Coal Co. were receiving some lateral allowances, that you heard it about the time you put on your locomotive at Gallitzin and that, as you understood it, then, it was about 10 cents a ton. That is correct, is it not?

A. Yes, sir. Some time before I put on the locomotive. I heard it was about 10 cents a ton for all through shipments, that is, shipments beyond Huntington.

Q. Shipments east of Huntington?

A. Yes, sir.

Q. Do you mean that you heard nothing concerning the local shipments around Altoona?

A. No, sir. I supposed the difference was 6 per cent. between Gallitzin and Kittanning Point.

Q. When did you first hear of any lateral allowance made to Latrobe, Millwood or Bolivar?

A. Some time in the Fall of 1904.

Q. What did you do when you ascertained that?

A. I commenced trying to get all the information I could about it.

Q. What did you do after you got all the information you could?

A. I did not get very much, but what I did get, when I got it, I put it to Mr. Graham, my counsel.

Q. As I understand, you first ascertained of this lateral allowance to Latrobe, Millwood and the Bolivar in the Fall of 1904?

A. Yes, sir.

Q. Early or late in the Fall, do you remember?

A. I think I first heard of it early in the Fall, about October.

Q. Did you investigate it?

A. Yes, sir.

Q. And then ascertained that the allowance had existed, late in the Fall?

A. Yes, sir.

Q. And those writs were issued the first or fourteenth of March, 1905?

A. Yes, sir. It took Mr. Graham some time to investigate it.

Q. Did Mr. Joyce or Mr. Searles ever notify you concerning the lateral allowances made to either the Altoona, the Glen White, the Millwood, the Bolivar or Latrobe companies?

A. No, sir.

Cross-examination.

By MR. GOWEN:

Q. How did you learn of the payment of the lateral allowance to Latrobe?

A. The first suspicion I had—

Q. Never mind suspicion. How did you learn?

MR. GILFILLAN: Tell how you first heard it.

A. The first I heard anything at all was from a competitor.

By MR. GOWEN:

Q. Tell us how you heard it.

A. I got suspicious about it and I then asked a party who had worked for the Latrobe Company—worked in the office.

THE REFEREE: Mr. Gowen wants you to state the exact detail.

A. Mr. W. A. Bradford.

By MR. GOWEN:

Q. Tell us.

A. This operator talked to me first.

Q. Who was the operator?

A. I would rather not state.

Q. We want to know.

A. It was John Lloyd. He told me I did not get what I ought to have got when I was shipping. A short time afterwards I met Mr. Bradford and I got talking about what Altoona Coal Co. and another company got, and the Latrobe, and he told me he wondered how I could get so near it.

Q. Who was Mr. Bradford?

A. He was with the Altoona Coal & Coke Co. and the Latrobe Coke Co., first in their office at Altoona, and then he was with the Columbia Coal Mining Co. down here.

Q. You never got a copy of a letter relating to the payment of this lateral?

A. No, sir. I never got any letter.

Q. The first information you got was from Mr. Lloyd?

A. That was the first information I had.

Q. That was in April, 1904?

A. Yes, sir.

Q. Can you give it closer? What month was it?

A. I might find out about it later.

Q. What have you to refer to?

A. I went to Mr. Lloyd first, when he told me, to sell him a piece of Illinois coal land, and I could probably locate it from that.

Q. You have no correspondence that would show?

A. No, sir.

Adjourned until Monday, June 24, 1907, at
3 p. m.

Tuesday, July 9, 1907, 11 a. m.

Present:

HON. THEODORE F. JENKINS, Referee.

JOSEPH GILFILLAN, Esq., for Plaintiff.

FRANCIS I. GOWEN, Esq., for Defendant.

Examination of J. G. Searles resumed.

By MR. GILFILLAN:

Q. State whether as matter of fact shipments made by Duncan, Spangler & Company, the Morrisdale Coal Company, David E. Williams & Company, and the Stirling Coal Company to the Atlantic Refining Company during the period that rate adjustments were made were shipped at the rate of eighty cents a ton freight when you were charging Mitchell a dollar? I

mean shipments made by either of the above named shippers or any of them?

A. No, sir.

Q. What was the charge for shipments to the Atlantic Refining Company?

A. During a portion of the period a dollar and ten cents a ton; during another portion a dollar, when the rate was a dollar. I cannot give you the date.

Q. Was it ever less than a dollar?

A. Not that I know of.

Q. Do you mean to say that you have not in your transmittal letter copy books statements showing that it was eighty cents from the Clearfield region?

A. I have been unable to find anything of the kind.

Q. You have looked, have you?

A. Yes, sir. And I have no recollection of it.

Q. Did any of those four shipping companies which I have named ship to the Sugar Refinery at Long Island City at the rate of ninety-five cents to Jersey City?

A. I cannot find anything of the kind.

Q. What do you find they did pay?

A. I have not any record of the shipments from the consignees. I cannot designate any particular consignee. I could not find that they were specified.

Q. Do you know that ninety-five cents was paid on shipments to the Long Island City Refinery?

A. No.

Q. Do you mean you do not know anything about it?

A. I do not know whether there were any shipments to the New York Sugar Refining Company. I have a record that we quoted Mr. Mitchell a rate on shipments to Long Island City for the Sugar Refining Company.

Q. Did you give a rate of ninety-five cents during the period of the action to either Williams, Duncan,

Spangler & Company, the Stirling Coal Company, the Morrisdale Coal Company or any other coal companies?

A. On shipments for the New York Sugar Refining Company?

Q. For any shipment?

A. Yes, sir.

Q. You charged Mitchell a dollar thirty-five, did you not?

A. No, sir.

Q. What did you charge?

A. A dollar ten cents on shipments for the Long Island Railroad.

Q. What did you charge him for shipments other than that?

A. I do not know whether he had any other than that.

Q. Do you not know he paid a dollar thirty-five cents?

A. He might have on some shipments; yes, sir. I can show you a letter I addressed to the Auditor instructing him to charge a dollar and ten cents.

Q. Do you mean Mitchell never paid a dollar and thirty-five cents to Jersey City for the Long Island Railroad while you were charging these other men ninety-five cents?

A. No; I do not think he did. Not so far as I know.

Q. You did, however, quote the ninety-five cent rate to other shippers?

A. For a very short period on some shipments.

Q. What period was that; during what year?

A. I think it was during a portion of the year 1899. I am not quite sure.

Q. The early part of 1899?

A. No; I think it was about the middle of 1899. I am not quite sure as to the date. I do not want to make a mis-statement about it.

Q. You said on some shipments?

A. Yes, sir.

Q. What shipments were they?

A. That I cannot tell you without looking at the memorandum.

Q. Have you it with you?

A. Yes, sir. (Referring to the memorandum.)
As to Mitchell shipments to the Long Island Railroad, that was in the early part of 1900.

Q. What do you mean by the Mitchell shipments?

A. The Mitchell Coal and Coke Company.

Q. You mean that was the time they shipped the coal?

A. Yes, sir. As far as I know. That was in the early part of 1900. We charged them a dollar ten a gross ton to Jersey City.

Q. What did you charge them prior to that?

A. I do not know whether they made any shipments. I have no record.

Q. What were the shipments you charged ninety-five cents to Jersey City for?

A. On shipments for the Brooklyn Water Works, in July, August and September, 1898, ninety-five cents a ton to Jersey City.

Q. Is that all?

A. That is all.

Q. Did you not charge Burns Brothers on Thirty-eighth Street, ninety-five cents a ton?

A. I have no record of any shipment to Burns Brothers.

Q. What is your record as to the New York Sugar Refinery?

A. The only record I have some time during a period between August 1st, 1898, and March 31st, 1899, I quoted Mr. Mitchell a rate of a dollar and ten cents a ton to Long Island City float bridge for the New York Sugar Refining Company.

Q. You have no record of quoting any of these

other shippers to the New York Sugar Refining Company?

A. No, sir.

Q. Did I not understand you to say there was no freight rate under a dollar per ton on coal shipped from the Clearfield region to the Atlantic Refining Company in Philadelphia?

A. I have not been able to find any.

Q. Have you those rate books here with you?

A. No. I have one.

Q. The big one?

A. Yes, sir.

Q. Have you the second rate book, the next one, the smaller one?

A. No; I haven't that here.

Q. Did you look through that?

A. Yes, sir. We looked through all of our books.

Q. And you say you cannot find it?

A. Yes, sir.

Q. This shipment to the Brooklyn Water Works was from the Clearfield region at ninety-five cents, was it not?

A. Yes, sir.

Q. And the Clearfield and Latrobe you treat as the same?

A. No.

Q. Now you do for coal, do you not?

A. We do now.

Q. Did you not at the time that rate was quoted?

A. No, sir.

Q. What was the ninety-five cent rate from, Clearfield?

A. The Clearfield region.

Q. Did you quote a rate of ninety-five cents or more from Latrobe to the Brooklyn Water Works?

A. No, sir. We haven't any record of it.

Q. You do not know whether you quoted it at all or not?

A. No, sir.

Q. You testified, page 161, in reply to the following questions, "Your transmittal letter book will show in some instances, will it not, that quotations from Latrobe and Clearfield were the same? A. It might. Q. Do you not know that there are at least one or two instances? A. Yes; I think so. We have not been able to dig it out as yet." Did you get that?

A. No.

Q. At the last meeting you presented three letters which you had sent to Knipe concerning rates to Har-simus, South Amboy, Greenwich inside the Capes and Greenwich outside the Capes. You remember those letters?

A. Yes, sir.

Q. Those were what you might call the published tariffs?

A. Yes, sir.

Q. The net rates were contained in those books that you had before you which you were examining containing the published and quoted rate?

A. Yes, sir. As I told you, I have only one book which shows the published and the quoted rates; that large one.

Q. The other shows the quoted?

A. Yes, sir.

Q. Have you all those books here, those that either show the published and quoted rate or show a quoted rate?

A. I think so; yes, sir.

Q. Have the published tariff rates covering interstate shipments been published and filed with the Interstate Commerce Commission since 1887?

A. All of our tariffs covering rates to interstate points have been published and filed with the Interstate Commerce Commission ever since the Interstate Commerce Law went into effect, which was in 1887, I think.

Mr. Gilfillan read in evidence published tariff

rates of the Pennsylvania Railroad Company covering interstate shipments during 1897, 1898, 1899, 1900 and 1901.

It is agreed by Mr. Gowen that he will produce anyone of the tariffs that may be requested for the purposes of this case before the Referee or in court.

Q. What about the published tariff rates for shipments within the State?

A. The rates to all points in the State are not published and printed. To short haul points, for instance, they were covered by what we call rate orders, simply a ribbon sheet sent to the agent at the scales to bill from, and also a copy of it filed with the auditor.

Q. There were published rates, however, to most of the points of destination, were there not, on intrastate?

A. Yes, sir; most of them.

Q. What did you do with them?

A. We sent them to the agents at the billing points, the scales, and in many cases, if they are important points, we send them to the shippers, the same as we do our interstate rates. It has been our custom for many years, although we are not required to do it by law, to send our tariffs to the shippers, State as well as interstate.

Q. These tariffs were departed from the same as the interstate tariffs, and net or quoted rates were given?

A. In some cases.

Q. When you say in some cases, you mean to some points?

A. Yes, sir.

Q. Any man could avail himself of the quoted rate, could he not, who shipped to the point to which the quoted rate was given?

A. I have already testified before that we quoted those rates on application.

Q. And any man who applied could get it?

A. Yes, sir.

Q. Was there any notice to anybody that they could get it by applying?

A. I do not think there was any formal notice to that effect.

Q. Some did apply and some did not?

A. Yes, sir.

Q. Some men paid the tariff rate?

A. A great many paid it.

Q. Have you those books which show the net rates?

A. Yes, sir.

Q. And those statements you were to prepare?

A. What statements? I do not remember that I was to prepare any statements.

Books produced.

Mr. Gilfillan offered in evidence books marked "1897", "1898", "1899 Bituminous Coal", "Bituminous Coal 1900", and also book containing printed and quoted tariff rates, insofar as the entries in any of the above books relate to the case now pending.

Mr. Gilfillan read in evidence statement produced by the defendant showing the payments for lateral allowances to the Millwood Coal and Coke Company.

Statement marked "Lateral Allowances to Altoona Coal and Coke Company, T. F. J., July 9th, 1907."

Mr. Gilfillan read in evidence statement produced by the defendant showing the payments for lateral allowances to the Millwood Coal and Coke Company.

Statement marked "Lateral Allowances and Rate Adjustment to Millwood Coal and Coke Company, T. F. J., July 9th, 1907."

Mr. Gilfillan read in evidence statement produced by the defendant showing the payments for lateral allowances to the Bolivar Coal and Coke Company.

Statement marked "Lateral Allowances and Rate Adjustment to the Bolivar Coal and Coke Company, T. F. J., July 9th, 1907."

Mr. Gilfillan read in evidence the statement produced by the defendants showing the payments for lateral allowances to the Glen White Coal and Lumber Company.

Statement marked "Lateral Allowances and Rate Adjustment to Glen White Coal and Lumber Company, T. F. J., July 9th, 1907."

Mr. Gilfillan read in evidence statement produced by defendant showing the payments for lateral allowances to the Latrobe Coal Company.

Statement marked "Lateral Allowances and Rate Adjustment to Latrobe Coal Company, T. F. J., July 9th, 1907."

Q. You testified here before that the lateral allowances were made on shipments east of Lewistown Junction?

A. Yes, sir.

Q. And there were also lateral allowances on the Hollidaysburg branch of the Pennsylvania Railroad?

A. Yes, sir; in some cases.

Q. The lateral allowances were made to the Altoona Coal and Coke Company, the Glen White Coal and Lumber Company, the Millwood Coal Company, the Bolivar Coal Company and the Latrobe Coal Company on commercial coal on all shipments east of the mines, were they not?

A. No; I should say not.

Q. Where were the exceptions?

A. I do not know now. The Latrobe Coal Com-

pany, for instance, sold a great deal of its coal locally right there in the neighborhood. That is my impression.

Q. Did they not get the lateral on that?

A. No, sir. I do not think they did.

Q. The Latrobe Coal Company?

A. I do not think they did. Anything they would sell around in the vicinity of Latrobe they would not get any lateral on.

Q. Are you sure of that?

A. I am as sure as I can be.

Q. Did you carry it?

A. Yes, sir; it would be moved perhaps a short distance over our road. There were rates applying between local points. I do not think they got any lateral on that.

Q. That was a very small amount of tonnage, was it not?

A. A great deal of the Latrobe Coal Company's coal, I think, moved west.

Q. I am talking about the local points that you spoke about.

A. I should say that would be comparatively small.

Q. I understand that they did not get any allowance on the western shipments?

A. I do not think so.

Q. Allowances were made on the Hollidaysburg branch. Were any shipments made by any of these companies on that branch?

A. I do not know. There might have been on the Altoona Coal and Coke Company's shipments. I do not think there were any shipments west from Gallitzin.

Q. It was allowed the Altoona?

A. I think so.

Q. And the Glen White?

A. I think so.

Q. The Glen White got laterals on shipments on the Hollidaysburg branch.

A. Yes, sir. I think that has already been testified to before.

Q. Did I understand you to say that no lateral was allowed on the western shipments of the Latrobe?

A. We have been over this so much that I cannot recall now.

Q. Did you not just say a moment ago—

A. I think there were probably.

Q. You said a moment ago you thought there were not?

A. I do not know. I have testified to it so many times. I had a memorandum of it at one time when I testified before.

Q. Let me read you this letter. It is dated April 25th, 1900, addressed to Taylor, Auditor of Freight Rates, by Joyce, General Freight Agent. "Dear Sir, taking effect March 24th, 1900, we arranged to allow Latrobe Coal and Coke Company for trackage ten cents per gross ton on coal and ten cents per net ton on coke or all other shipments to points reached by or via P. R. R. Will you please arrange to deduct this lateral on coal to the West before prorating with lines west of Pittsburg?" So there is no doubt, I suppose, that they got laterals on the western shipments?

A. I suppose not, according to that.

Cross-examination.

By MR. GOWEN:

Q. In all cases rates on coal were based on a ton of 2240 pounds, were they not, and on coke on 2000 pounds?

A. Except as to the western shipments. All of the rates to the eastern points on coal are per ton of 2240 pounds. In the case of coke, a ton of 2000 pounds. That is on coke in all directions. On coal to the west 2000 pounds.

Q. All rates apply from the mines from which the coal is shipped? Is that the case?

A. Yes, sir; mines on our road.

Re-direct-examination.

By MR. GILFILLAN:

Q. Is not the rate from the junction point on your road to the point of destination?

A. No, sir. I do not quite understand what you mean.

Q. Do you mean to tell the Referee that the rate is from the mine of the Altoona Coal and Coke Company or from Kittanning Point to Philadelphia on shipments made to Philadelphia?

A. It is from the Mine of the Altoona Coal and Coke Company.

Q. Does not this book which contains the rates, that printed portion, show from Kittanning Point?

A. It may show from Kittanning Point; yes, sir.

Q. Have you any book or paper which shows the rate other than from Kittanning Point to the point of destination?

A. Yes, sir.

Q. What?

A. We have our tariffs at the present time.

Q. Prior to the hearing before the Interstate Commerce Commission were not the rates quoted from one point on the Pennsylvania Railroad to another point on the Pennsylvania Railroad?

A. No; not in all cases.

Q. What was the usual rule?

A. We considered that the mines having connection with our road were located on the Pennsylvania Railroad practically.

Q. For instance, were not the rates quoted from Kittanning Point to Philadelphia on coal shipped from the Altoona Coal and Coke Company's mines to Philadelphia?

A. It might have been shown on the tariff as Kittanning Point.

Q. Had you any tariff at all which showed the rates in any other way?

A. As to Kittanning Point?

Q. Yes.

A. I do not think we had at that time.

Q. In every instance did not the tariff show from the point on the Pennsylvania Railroad nearest the mine to the point of destination?

A. No. In many cases the tariffs specified that the rates were applied from districts, points on the Tyrone and Clearfield Railroad, we will say, and points on the Pennsylvania and Northwestern Railroad, and points on the Cambria and Clearfield Railroad.

Q. But were not the points always on the railroad?

A. No.

Q. Give me an illustration where they were not.

A. There were a great many.

Q. Where you so stated in your tariff?

A. I do not know that I could answer that without examining the tariffs, but, I am sure there were points.

Q. Do you not know that the tariffs or rates were predicated from the point on the railroad nearest the mine to the point of destination?

A. No. In many cases there is no station near the mine. The mine is some little distance away from any station. Our engines go up the branches and get that coal.

Q. How is that designated?

A. Points on the Tyrone and Clearfield Railroad. We consider those as being points on the Tyrone and Clearfield Railroad. They had no other outlet.

Q. In the shipments of the coal and coke from the Altoona Coal Co.'s mines, were not the freight rates predicated from Kittanning Point to the point of destination?

A. We consider that they apply from the mine.

Q. How was it stated on the tariff?

A. I do not think it was so stated on the tariff.

Q. Do you mean to say that the shipping point for the Altoona Coal and Coke Company's product was not from Kittanning Point?

A. No; as I say, we considered that the rates applied from the mine.

Q. Where did you get the coal?

A. At Kittanning Point.

Q. The same is true of the Bolivar, the Millwood, the Latrobe and Glen White, you got the coal at the junction points of the tracks of the mining company with your railroad, did you not?

A. Yes, sir.

Q. With the exception of Latrobe?

A. No.

Q. Where did you get it?

A. We got Bolivar from the mines, I think.

Q. That is, your locomotives ran up and got it?

A. Yes, I suppose we did. I do not know.

Q. The same is true of Latrobe?

A. I think so. As to the Altoona Coal and Coke, and Glen White, I know positively, for I have been over both roads and up to the mines.

Q. You say now that the Pennsylvania Railroad hauls the Latrobe?

A. I never was up there and never saw them do it.

Q. Did you see it being done on the Altoona and Glen White?

A. Yes, sir.

Q. In the printed or published tariffs that you filed with the Interstate Commerce Commission, was the freight rate predicated from one point on your railroad to another or from the mine to the point of destination on the railroad?

A. In many cases we published rates from points on other railroads.

Q. In the rates that you published and filed with

the Interstate Commerce Commission covering interstate shipments, was not the freight rate predicated from Kittanning Point to a point of destination?

A. Kittanning Point was specified on the tariff, but, as I say, we always considered that the rates applied from the mines.

Q. Was there anything on the published rate which you filed with the Interstate Commerce Commission which had any rate to the Altoona Coal and Coke Company's mines or any other mines?

A. In some cases I think we did specify the mines.

Q. What one?

A. I cannot tell you now without looking at it, but I think they are on there.

Q. You never did it concerning the Altoona Coal and Coke Company's mines, did you?

A. I do not think we did.

Q. You never did it concerning the Glen White Coal Company's mine?

A. No, I think not.

Q. Nor the Bolivar?

A. Bolivar was very close to Bolivar Station; it was right there.

Q. Did you ever do it?

A. Did we say it applied from the Bolivar Coal and Coke Company's mines?

Q. Yes.

A. No; I do not think we did.

Q. Did you ever make any rate to the Millwood Company's mines?

A. I do not think so.

Q. Did you ever make any rate to the Latrobe Coal and Coke Company's mines?

A. I do not think we did.

Q. As a matter of fact, this question of the freight rates coming from the mines, was the result of the hearing before the Interstate Commerce Commission, was it not?

A. No; because before that we specified some of the roads on the tariffs.

Q. Did you not change the application of the tariff after the hearing before the Interstate Commerce Commission here in Philadelphia, when you made the tariff, so far as the Altoona Coal and Coke Company's product was concerned, read from the Kittanning Point Railroad instead of Kittanning Point?

A. We did that after the Hepburn law went into effect, the 29th of August, 1906.

Q. Prior to that there was never any rate to that railroad in your tariff, was there?

A. I do not think so.

WILLIAM HAMILTON recalled, and examined as follows:

By MR. GILFILLAN:

Q. Give the grade of the siding or lateral railroad of the Gallitzin colliery?

A. For about 1800 feet from the main line it averages about five-tenths of one per cent. against the loads. For 1100 feet seven-tenths of one per cent. against the loads. For 900 feet it is eight-tenths of one per cent. against the loads. For 450 feet it is one and two-tenths per cent. against the loads. For 300 feet it is one and nine-tenths per cent. against the loads. For 400 feet it is one and one-tenth per cent. against the loads. By saying "against the loads" I mean the loaded car has to be hauled up hill to the main line.

Q. Do you know the grade of the lateral railroad of the Altoona Coal and Coke Company?

A. Yes.

Q. What is it?

A. The average grade beginning at the end is three per cent. in favor of the loads.

Q. What about the Glen White?

A. Glen White averages from the main line to the end two and eight-tenths per cent. in favor of the loads.

Cross-examination.

By MR. GOWEN:

Q. Have you any familiarity with the siding of the Gallitzin Company at Gallitzin as it existed between 1897 and 1901?

A. No.

Q. You do not know what its condition then was?

A. No, sir.

Q. Or what its length was?

A. Only from hearsay.

Q. How as to the Altoona and Glen White?

A. The same way.

J. L. MITCHELL, recalled.

By MR. GILFILLAN:

Q. Are you familiar with the Glen White and Altoona and the Gallitzin Railroads?

A. Yes, sir.

Q. Are they the same today as they were in 1897, 1898, 1899, 1900 and 1901?

A. Yes, sir; with the exception of the Gallitzin, which is longer now than it was. There has been some added.

Q. You shipped a great deal of coal and coke over the Pennsylvania Railroad, did you not?

A. Yes, sir.

Q. Did you receive rates from the mine or from the station on the railroad?

A. The rates we got were always from the station.

Q. Did you ever hear of the rates being from the mine?

A. No, sir. I never saw any. Any published rate I ever saw always put it from the station.

Q. You testified on page 81 that when you sold out to the Webster Company you retained all outstanding accounts due by that company and all outstanding claims of that company?

A. Yes, sir.

Q. What did you mean by that? Was the Mitchell Coal and Coke to collect the claims and pay them to you?

A. The Mitchell Coal and Coke Company collected the accounts and paid the debts and the balance came to me.

Q. The same is true of this claim?

A. Yes, sir.

Q. The Mitchell Coal and Coke Company is the one entitled to collect this claim?

A. To collect it for me; yes.

Q. From the Pennsylvania Railroad Company?

A. Yes, sir.

Cross-examination.

By MR. GOWEN:

Q. The rates which you paid covered the transportation of the coal by the railroad from your mines, did they not?

A. Yes, sir.

By MR. GILFILLAN:

Q. Do you mean that the rate was from the mines to the point of destination or from the station on the Pennsylvania Railroad to the point of destination?

A. When I hauled it with my locomotive it was from the point of destination, but all our local rates would be from Gallitzin station; that is, the published rate. It would be a rate from Gallitzin. It was not from my mine or any other mine. The rate was given from the station.

Q. From the station nearest the mine?

A. Yes, sir.

By MR. GOWEN:

Q. The rate was published from the station nearest the mine? Is that the case?

A. Yes, sir.

Q. But it was applied from the mine?

A. Yes; I would suppose it would.

Q. In the case of all your mines, was not the rate applied from your mines?

A. There was no rate between them, certainly.

Q. You paid nothing more than the published rate from the nearest station?

A. No.

Q. Although the coal was transported by the railroad company from your mines?

A. All except Gallitzin.

Q. Except during a portion of the time from Gallitzin?

A. Yes, sir.

Mr. Gilfillan read in evidence the following statements:

Statement marked Latrobe Coal Company Interstate Coal and Coke, T. F. J., April 30th, 1907.

Statement marked Latrobe Coal Company Interstate Coal, T. F. J., April 30th, 1907.

Statement marked "Latrobe Coal Company Interstate Coke, T. F. J., April 30th, 1907."

Statement marked "Altoona Coal and Coke Company Interstate Coal, T. F. J., April 30th, 1907."

Statement marked "Altoona Coal and Coke Company Interstate Shipments of coke from April 1907 to May 1st, 1901, T. F. J., June 20th, 1907."

Statement marked "Glen White Coal and Lumber Company Interstate shipments Coal, T. F. J., May 2nd, 1907."

Statement marked "Glen White Coal and Lumber Company Interstate Shipments Coke, T. F. J., May 2nd, 1907."

Statement marked "Millwood Coal Company Interstate Shipments Coal, T. F. J., May 2nd, 1907."

Statement marked "Bolivar Coal and Coke Company Interstate Shipments Coke, T. F. J., May 2nd, 1907."

Statement marked "Shipments of coal from Latrobe Coal Company, on account of Columbia Coal Mining Company, T. F. J., June 20th, 1907."

Statement marked "Shipments of coke from Latrobe Coal Company, on account of Columbia Coal Mining Company, T. F. J., June 20th, 1907."

Statement marked "Shipments of coal from Altoona Coal and Coke Company on account of the Columbia Coal Mining Company, April 1st, 1907, to May 1st, 1901, T. F. J., June 20th, 1907." (See page 230.)

J. L. MITCHELL, recalled.

By MR. GOWEN:

Q. Have you had the statements covering the shipments made by your company both State and interstate, so marked as to designate those shipments which cover coal sold f. o. b. mines?

A. Yes, sir.

Q. How are those shipments shown?

A. All coal sold f. o. b. mines has a red ink check mark after the weight.

Adjourned until a date to be fixed by agreement of counsel.

Wednesday, October 30th, 1907.

Present:

HON. THEODORE F. JENKINS, Referee.

JOSEPH GILFILLAN, Esq., and

GEORGE S. GRAHAM, Esq., for Plaintiff.

FRANCIS I. GOWEN, Esq., for Defendant.

Mr. Gilfillan offered in evidence plan and profile of tracks of the Glen White Coal and Lumber Company.

Also plan and profile of the tracks of the Altoona Coal and Coke Company.

Also plan showing tracks and grade of Columbia No. 8.

Also plan showing tracks and grade of the Bolivar Coal and Coke Company.

Also blue print showing the tracks and grade of Columbia No. 4.

Also blue print entitled P. B. C. and E. C. Co. sketch siding and colliery No. 1. This colliery was known during the period of the action as Columbia No. 4.

Also blue print showing tracks and grade of Columbia No. 6. This blue print is entitled "Pennsylvania Coal and Coke Company, showing sidings at Nant-y-glo. This colliery was known during the period of the action as Columbia No. 6.

Also blue print entitled "Plan of Tracks for new tipple at Ben's Creek," showing the tracks and grade. This colliery was known during the period of the action as Columbia No. 7.

Also blue print showing tracks and grade of the Hastings colliery, and so marked.

Also plan marked "Showing tracks and grade of Latrobe Coal Company", and so marked.

Also plan and profile of tracks of the Pennsylvania Coal and Coke Company near Gallitzin, and is thus marked on the plan. This colliery during the period of the action is known as Gallitzin Colliery of the Mitchell Coal and Coke Company.

Also blue print showing the tracks and grade of the Millwood Coal Company and which is so marked on the plan.

Also plan showing tracks and grades of Bennington colliery, marked on the plan "Bennington Mine".

The application for the amendment filed April 17th, 1907, is withdrawn.

PLAINTIFF RESTS.

DEFENDANT'S EVIDENCE.

J. G. SEARLES, heretofore sworn, having been duly recalled, was examined as follows:

By MR. GOWEN:

Q. Where was the Bolivar operation located?

A. I cannot give you the exact location, but very close to Bolivar station on the main line of the Pennsylvania Railroad. It is west of Johnstown, between Johnstown and Latrobe.

Q. Locally, was it in the Latrobe or in the Clearfield region?

A. It was in the Latrobe at that time.

Q. How far west of the Clearfield region was it?

A. I have that information here some place.

Q. Without referring to miles, was it the first coke operation west of the Clearfield region?

A. Yes, sir.

Q. And, therefore, it was the first coke operation that took the Latrobe rather than the Clearfield rate?

A. Yes, sir.

Q. What information had you at the time that the so-called lateral allowance was made to that company on coke shipments as to the quality of the coke made at that operation?

Mr. Gilfillan objects to the question.

Objection overruled.

A. It was represented to us to be an inferior quality of coke; the coal was very thin; it cost them considerable to make the coke, and they could not market their coke in competition with the coke produced on the mountain at higher rate of freight.

Q. By the mountain you mean the Latrobe?

A. We always designated the coke made in the so-called Clearfield region as mountain coke or mountain region, in the coke business.

Cross-examination.

By MR. GILFILLAN:

Q. When you were answering there you said at the time it was in the so-called Latrobe region?

A. It is now as to coke.

Q. What did you mean by qualifying it?

A. I think I testified here before as to bituminous coal we changed the region, we extended the Clearfield rate beyond this point as to coal.

Q. When was that?

A. That I could not say.

Q. You have testified as to that, have you not?

A. Yes, sir; I think so.

Q. As to the coke you say it is still the Latrobe rate?

A. Yes, sir.

Adjourned until Monday, November 4th, 1907,
at 11:30 a. m.

Monday, November 4th, 1907.

Present:

HON. THEODORE F. JENKINS, Referee.

JOSEPH F. GILFILLAN, Esq., for Plaintiff.

FRANCIS I. GOWEN, Esq., for Defendant.

J. L. MITCHELL, recalled for further cross-examination.

By MR. GOWEN:

Q. You have testified that the sidings of the Glen White Coal and Lumber Company and the Altoona Coal and Coke Company connected with the railroad of the defendant at Kittanning Point?

A. Yes, sir.

Q. Where is Kittanning Point located?

A. I think it is between six and seven miles from Altoona.

Q. West of Altoona?

A. West of Altoona.

Q. It is the slope of mountain north of Gallitzin colliery on the branch or spur from the Gallitzin colliery connected with the railroad of the defendant at the summit of the mountain, is it not?

A. Yes, sir; I think on the summit.

Q. In making deliveries of cars to the Gallitzin operation it was the practice, was it not, for the defendant's trains, which were halted at Gallitzin for that purpose, to use a siding? They were not left standing on the main line, were they?

A. No, sir.

Q. There was a siding available?

A. There was a siding belonging to the Mitchell Coal and Coke Company.

Q. Was there not a siding also of the defendant there which they used for that purpose?

A. Part of the siding was on their right-of-way. Probably a hundred feet of it.

Q. In stopping their trains there at the time they were working the siding, they were not occupying the main line?

A. No. They brought the whole train in.

Q. How was it at Kittanning Point with reference to a siding?

A. They were the same as we were there. At times there was a through train passing over the road that stopped at Gallitzin on the main line and drilled out cars for our use and put them on our siding. They probably would do that in the evening, and the next day if our engine or our teams did not haul the cars in, then their train would put them in. Their engines, I mean, would put them in the next day.

Q. As a rule, though, at Gallitzin, the trains which were stopped there to enable either cars to be delivered or cars to be taken up from your operation, did not occupy the main line while they were stopping?

A. Yes, sir; they occupied the main line.

Q. You say as a rule?

A. Yes, sir.

Q. Do you mean during the period of this action?

A. Yes, sir. The trains that handled the cars at the mines very seldom brought the empty cars with them. They were usually put in on a train the night before. A through train would cut the cars out and push them in on our siding.

Q. I am speaking of the operation of siding cars on your siding and picking up cars from your siding. That was done, as I understand it, in connection with local trains, and not as a single movement over that siding?

A. No, there was a coal train, the Altoona coal train we called it, usually took the cars away from that siding. The same kind of a train took the cars away. Our cars were usually left by a train. That is, the

empty cars. I think Altoona was the same. But the local coal train picked up the loaded cars and hauled them into Altoona.

Q. But the train which hauled the loaded cars from the Gallitzin colliery to Altoona was not used exclusively for that purpose, but handled other coal as well?

A. Yes, sir; it handled Taylor and McCoy's coal.

By MR. GILFILLAN:

Q. Who is Taylor and McCoy?

A. Another mine at Gallitzin.

By MR. GOWEN:

Q. And handled coal from operations west of Gallitzin?

A. Yes, sir. I would not say that, because during most of the time of this action they got a full train usually at Gallitzin. That is at the two plants there.

Q. You do not speak with any confidence of that? You do not say that with any confidence, do you? Is not that mere surmise?

A. As I remember it, I do not think that they hauled coal from west of there during most of this action.

Q. Of course, you very rarely saw the actual operation of moving the coal from the mine?

A. I probably saw it a couple of times a week.

Q. You are only speaking, therefore, of your general impression as to what the operation was?

A. I knew it pretty well at that time. It has been a good while since.

Q. I mean that as you say you would not see it probably more than a couple of times a week, you do not know, therefore, of your own knowledge, what the method was?

A. I think that was the method.

Q. Is it a fact that you only occasionally, probably a couple of days a week, saw the actual movement of the coal from your operation?

A. It would average fully that.

Q. The trains going up the mountain from Altoona to Gallitzin had to have a helping engine during the period of this claim, did they not?

A. Yes, sir.

Q. Where was that helper dropped or cut loose?

A. At Gallitzin.

Q. Close to your branch?

A. Yes, sir.

Q. Can you tell how long a time it took, as a rule, the defendant to work your siding, your branch?

A. I would say an average of two hours, in that neighborhood. Besides the work we did with the teams.

Q. In your testimony you stated that the shipments which had been sold by you f. o. b. at the mines were ticked with a red tick?

A. Yes, sir.

Q. That covered both coal and coke?

A. Coal and coke.

Q. I notice that in these statements—the coal shipped to the P. B. and W. Railroad Company was not so ticked?

A. That railroad coal was separate.

Q. I understand that was sold f. o. b.?

A. You told me to put that in separate.

Q. You have not ticked the railroad coal which was sold f. o. b. the mines?

A. I do not think it was ticked; no, sir.

MR. GILFILLAN: That was gotten up separately.

MR. GOWEN: There is no separate statement.

THE WITNESS: Yes, there is a separate statement of the railroad coal. I think you will find it in the evidence.

MR. GOWEN: I do not recall any statement covering the railroad coal.

MR. GILFILLAN: I think there was.

By MR. GOWEN:

Q. My recollection is that you testified that the coal sold to the Pennsylvania Railroad, the P. B. and W., and the Cumberland Valley, was all sold f. o. b. the mines?

A. Yes, it was all sold f. o. b.

Q. But there was some railroad coal which had not been sold f. o. b.?

A. The Delaware, Susquehanna and Schuylkill, I think, and the Long Island Railroad and the Lehigh Valley Railroad.

Q. The Pennsylvania Railroad, the P. B. and W. Railroad and the Cumberland Valley Railroad coal was all sold f. o. b. the mines?

A. Yes, sir.

Q. The Lehigh Valley, Delaware, Susquehanna and Schuylkill and the Long Island was not sold that way, but sold at the delivered price?

A. Yes, sir; at the delivered price.

By MR. GILFILLAN:

Q. Mr. Gowen spoke about the siding as if there were two sidings, one of the railroad and one of yours. Were there two or was there just the one at Gallitzin?

A. Our siding connected with the main line of the Pennsylvania Railroad at Gallitzin, and went off almost at right angles to it.

Q. Was that the same method of connection as was used at the Glen White operation and the Altoona Coal and Coke Company?

A. Just the same.

Q. Have you seen during the period of this action deliveries taken at the Altoona and Glen White as well as Gallitzin?

A. Only in passing.

Q. Did you see it in passing?

A. Yes, sir.

Q. Was there any different method used?

A. Really I couldn't see any difference.

D. W. JONES, having been duly sworn, was examined as follows:

By MR. GOWEN:

Q. Where do you reside?

A. At Latrobe, Pennsylvania.

Q. Are you connected with the Latrobe Coal Company in any way?

A. Superintendent.

Q. And have been for how many years?

A. Twenty-six years and seven months. Since April 1st, 1881.

Q. You were, then, the superintendent of the Latrobe Company between April, 1897, and May, 1901?

A. Yes, sir.

Q. During that time were you familiar with the operations of the company?

A. Yes, sir.

Q. During that period did the Latrobe Company own any locomotive which was used around the mines?

A. Yes, sir.

Q. Was it a small one or a large one?

A. Small locomotive.

Q. What is the grade of the siding from the point of connection with the railroad to the tipple and coke ovens?

A. There is a dip in it. From the Pennsylvania Railroad it drops in probably a little over half way at an average of about two feet, probably, in a hundred; maybe more. Then it rises up to the tipple one foot to the hundred, and from there above the tipple it is probably two feet, in the neighborhood of that. I do not know the grade. Only from the tipple down I know that it is one foot to the hundred.

Q. During the period that I have referred to, what

did the Latrobe Company do in the way of moving cars which were placed on its siding by the Pennsylvania Railroad, or moving empty cars after they had been loaded by the Latrobe Coal Company?

MR. GILFILLAN: With this engine, do you mean?

MR. GOWEN: Yes, with this engine.

A. We moved the empty cars almost daily for a year or two. I, of course, did not take any particular count of the number we moved or the days, but during the winter months, especially when the cars were very scarce, it was almost a daily occurrence that we had to place our empty cars above the tipple with the little engine.

Q. Was it necessary to go up above the tipple?

A. Yes, sir.

Q. Why?

A. Because they placed the empty cars above the tipple and they dropped down by gravity under the tipple and loaded and dropped away from the tipple.

Q. As I understand it, when you say it was an almost daily occurrence, there were times when it was not necessary for the Latrobe Company to do anything, because the cars were placed above the tipple by the railroad.

A. Yes, sir. If the regular shifter that did the work at our plant failed to get the empty cars, they were simply thrown in clean of the main line and we had to take care of them until 2 o'clock probably in the afternoon.

Cross-examination.

By MR. GILFILLAN:

Q. The regular shifters did the work for you, did they not?

A. It was their duty to do the work.

Q. And they did do it?

A. Yes, sir; they did it.

Q. This year that you speak about, when was it?
Two years ago?

A. I could not tell you just the year.

Q. Do you know what year it was that this dinky engine was doing the work?

A. It always done it from the time we purchased it.

Q. When did you purchase it?

A. I think we put it in service in March, 1896.

Q. And continued until when?

A. Until the present time.

Q. You do not mean to say that the engineer and train crew of the Pennsylvania Railroad did not push those cars in and take them out at any time, do you?

A. They always took them out.

Q. They always took them out?

A. They always took them out. We never delivered any onto the main line.

Q. They took them out onto the main line?

A. Yes, sir.

Q. They came up on your branch to the place where you had dropped them by gravity and pulled them out over the private siding onto the main line?

A. Yes, sir.

Q. How big was this engine?

A. It was eight ton and a half.

Q. That engine could not pull one loaded car up a grade of half a foot in ten, could it?

A. Yes, sir; it could pull it up a foot.

Q. One car?

A. Yes, sir.

By MR. GOWEN:

Q. You mean pull it up a grade of a foot?

A. Yes, sir.

By MR. GILFILLAN:

Q. You know the engine at Altoona, don't you?

A. I have seen it.

Q. Your engine is not anything like that, is it?

A. No.

Q. It is not like Glen White?

A. No.

Q. It was not like Mitchell had at Gallitzin?

A. I have not seen his.

Q. It is an eight ton engine?

A. Eight ton and a half.

Q. Was not that engine used to drop the lorries around to charge the coke ovens?

A. We did use it for that purpose.

Q. That was the real purpose of the engine, was it not?

A. No, sir; it was not. We had a wire rope hauler, an endless rope hauler.

Q. Didn't you get rid of the rope haulers when you got that engine?

A. Yes, sir; when we got the engine.

Q. The engine was used for that?

A. Yes, sir.

Q. And principally for that?

A. It is used all the time for that. We charge all the ovens with it.

Q. And this engine is an eight ton engine, is it not?

A. Eight and a half.

Q. The regular shifters do the work in there in shifting the cars in and taking the loaded ones out?

A. Yes, sir.

Adjourned until Friday, November 8th, at 11:30 a. m.

Friday, November 8, 1907.

Present:

HON. THEODORE F. JENKINS, Referee.

JOSEPH F. GILFILLAN, Esq., for Plaintiff.

FRANCIS I. GOWEN, Esq., for Defendant.

S. C. LONG, having been duly affirmed, was examined as follows:

By MR. GOWEN:

Q. You are connected with the Pennsylvania Railroad Company?

A. Yes, sir.

Q. What office? What is your position?

A. At present, general superintendent of the Western Pennsylvania Division of the Pennsylvania Railroad.

Q. What is included in the Western Pennsylvania Division?

A. The main line from Altoona to Pittsburg, with all the branches connected therewith, the Conemaugh Division and branches, the Monongahela and branches and the Pittsburg and Monongahela System.

Q. When did you become the general superintendent of the Western Pennsylvania Division?

A. April of this year.

Q. Before that what position did you hold?

A. Superintendent of the Pittsburg Division, extending from Altoona to Pittsburg, and the branches connected with it.

Q. How long have you held that position?

A. January 1st, 1903, to April 1st, 1907.

Q. Before that what position?

A. Prior to that I was superintendent of the Allegheny Railroad; the lower part of it.

Q. How long have you been connected with the Pennsylvania Railroad Company?

A. Since April, 1881.

Q. And during all that time you were in the operating department of the company, were you?

A. A portion of the time in the construction department, then in the maintenance of way department, and then into the C. T. department, the operating department.

Q. You are familiar, are you not, with the branch lines connecting the mines of the Altoona Coal and Coke Company and the Glen White Coal and Lumber

Company with the main line of the Pennsylvania Railroad Company?

A. Yes, sir.

Q. You are also familiar with the branch, or spur, whatever you may call it, connecting the Gallitzin mine with the Pennsylvania Railroad?

A. What Gallitzin? There are a number of Gallitzin mines.

Q. I mean the mine formerly operated by the Mitchell Coal and Coke Company, now operated by the Pennsylvania Coal and Coke Company.

A. Pennsylvania, Beech Creek and Eastern.

By THE REFEREE:

Q. You have not answered the question.

A. Yes, sir.

By MR. GOWEN:

Q. Taking the branch of the Altoona Coal and Coke Company and the branch of the Glen White Coal and Lumber Company on hand, and the branch, or spur connecting the Gallitzin operations with the Pennsylvania Railroad, from a railroad operating standpoint, is there or is there not any similarity between those operations?

A. Any similarity?

Q. Yes.

A. "Any similarity" is such a wide latitude.

Q. Give your own answer. To what extent are they different, having regard to the question whether the railroad company should itself operate those branches?

A. Very dissimilar.

Q. Will you state in what respect?

A. With regard to the Kittanning Run railroad connection with the Altoona Coal and Coke Company; I would class that as a branch railroad.

By MR. GILFILLAN:

Q. You know that that was after 1901 that that was made a railroad?

A. No, I do not know when it was.

MR. GILFILLAN: I object to what he classes as a railroad.

THE WITNESS: I say they are very dissimilar.

By MR. GOWEN:

Q. In what respects are they dissimilar?

A. One is a branch railroad with back switches leading to the Altoona Coal and Coke Company's ovens and tipples, with very stiff grades and very sharp curves; not so much to the Glen White, not so much of a branch railroad, while the No. 10 mine, as we know it, at Gallitzin, was very similar to many other operations in the region, being a little siding half a mile in length, reaching the tippie or oven, and operated directly with road power as against the other two propositions having to be operated either by an individual or separate engine, or engine specially assigned to that business by the railroad.

Q. If the railroad company were operating a spur at No. 10 mine at Gallitzin itself, would or would not that be operated by an ordinary train and the roading and the movement of cars be made by the road engine?

A. Yes, sir.

Q. How long a time would it probably take to deliver the empties and take out the loads from that operation?

A. From the present standpoint?

Q. As it stands today, yes.

A. Two hours and a half or three hours, according to the output of the day.

Q. You are speaking of Gallitzin now?

A. Yes, sir. I would modify that answer by saying from thirty minutes to two hours and a half, according to the output.

Q. Taking the same number of cars to be delivered at the Gallitzin No. 10 mine and the same number of loads to be taken out that you would have to handle at the Altoona Coal and Coke Company operation, what would be the probable difference in the time consumed in the delivering of the empties and in the taking out of the loads as between those two operations?

A. If there were four cars at each place, it would take as much longer in the one place than the other as the grades and distances differed from each other. If there were eight cars, it would take twice as long in one place as the other; if there were twelve cars, it would take three times as long.

Q. Do you mean by that that if there were eight cars to be handled at each operation that it would take only twice as long at Altoona as at Gallitzin?

A. No; I said taking the grades and the distance into consideration. You said the same number of cars. Now there might be four cars to No. 10 mine and there might be four cars to the Altoona Coal and Coke Company's mines. One place it is about two thousand feet for four cars, which would take a very short time, and the same four cars cannot be moved by the engine up the five miles or a little more with one trip, so that it would take just as much longer to place those four cars at one place as the difference in distance and grade upon the two between the two places.

Q. What, in your judgment, would be the difference in time, supposing you were handling four cars as between the Gallitzin operation and the Altoona Coal and Coke Company operation?

A. Five or six times longer.

Q. If you had eight cars at each place?

A. At No. 10 it would take a very few minutes longer to place eight than four, while at the other place it would take twice as long, or, say, twelve times as much time, because the engine can only take four cars up the mountain, going up eight hundred feet in the air,

at a time, and they would have to come back for the next four, whereas at the other mine they could take four at once, or eight, or twenty.

Q. So, if I understand you, when it becomes a question of handling more than four cars at the Altoona Coal and Coke Company operation the engine has got to make as many trips up and down that incline as there are multiples of four?

A. Four or five, according to the weather. I understand that under extraordinary circumstances they can push six up. On a day like yesterday, with a wet rail, it would be limited to four, another day five; but four, five and six are the amount of cars that this engine can take up the eight hundred feet to the top of the mountain. So, as the cars increase in numbers at both places, the ratio of time of the one and the other would multiply progressively very fast as against the Altoona operation.

Q. Having regard to the grade and curvature of the Altoona Coal and Coke Company's branch, could that be operated safely by an ordinary road engine?

A. No, sir.

Q. So that would it be possible to supply a train with an ordinary road engine at the junction of that branch and allow that engine to go in and operate the branch?

A. You would have to assign a special engine to the Altoona Coal and Coke Company on account of the curves and the grades.

Q. From what point would that engine have been operated?

A. From Altoona, the headquarters of all our power.

Q. If I understand it then, there would have to have been a special service at Altoona, due to the Altoona Coal and Coke Company operation, if the railroad company had itself operated that branch?

A. I think so. That is the way I would do it to-day.

Q. In what respect does the Glen White Coal and Lumber Company branch differ from the Altoona Coal and Coke Company branch?

A. In that it is not so long and has no back switches. Otherwise the same—very stiff grades.

Q. I wish you would just explain to the Referee what you mean by back switches and how they are operated.

A. In order to ascend a very high altitude in a very short distance, you go forward a mile and go backward a mile and then forward a mile and then backward a mile, and that is called the system of back switches. This ravine is a narrow ravine. They start on the right hand side of the ravine and ascend it 200 feet to the mile and then run backwards across the ravine to the other side and ascend. They have climbing up on the face of the mountain two or three or four back switches, as may be the case, to get up a great altitude in as short a distance as possible.

By THE REFEREE:

Q. Is it just the same as an ordinary wagon road up a mountain?

A. Exactly.

By MR. GOWEN:

Q. Coming to the branch of the Glen White coal and lumber operation you have said that that differs from the branch to the Altoona Coal and Coke Company operation to the Altoona Coal and Coke Company in that the grades are not quite so heavy and the curvature not so great.

A. The grades are very stiff, but no back switches.

By MR. GILFILLAN:

Q. And not as long?

A. Not as long.

By MR. GOWEN :

Q. Could a road engine be safely used on the Glen White Coal and Lumber Company branch?

A. No, sir.

Q. Would that then have to be operated also by a separate engine running out from Altoona?

A. In its present condition, we have no engine that I know of that could operate on that branch.

Q. What do you mean by that?

A. By reason of sharp curves and very light rails, we would not consider it safe to run any kind of road engine up that road in its present condition. It would have to be rebuilt. It would not be safe for the train men.

By MR. GILFILLAN :

Q. That is today, you mean?

A. Today, yes, sir. The rails would be apt to break under the heavy weight. It would not be wise to try anything like that. We would have to have an engine more commensurate with the class of rails and track you have got.

By MR. GOWEN :

Q. If, as you say, a road engine could not go in there on the Glen White Coal and Lumber Company branch, what would the railroad company have to do if it were operating that branch itself?

A. We would revise its alignment and change the character of the rails and ties and culverts, so as to carry the proper kind of a road engine and operate it from Altoona, which is the headquarters of our power crews.

Q. How long a time would it take by comparison with the No. 10 mine at Gallitzin to deliver the same number of cars at the Glen White Coal and Lumber Company operation as at the Gallitzin operation?

A. On account of the grades, if there were four cars, two or three times as long at Glen White as at

No. 10. If there were eight cars it would double itself for the reason that the engine on our road can only take so many at a time, and the oftener it would have to go the more time it would take, whereas at the other proposition it would take all the cars in at once.

Q. Can you give us in the case of the Gallitzin No. 10 mine the distance that the railroad company or anyone had to move the cars from the junction with the Pennsylvania Railroad Company to the tippie?

A. Yes; my recollection is it is about a little short of a half mile from the property line to the coal tippie and a little less than that to the first ovens, and more than that to the last ovens; possibly a mile to the last ovens, three-quarters of a mile to the last oven. In explanation I would say the tippie is about 2500 feet from our property line, the first oven this side of the tippie is 1500 feet from the property line, and the last oven three-quarters of a mile from the property line, so that there are three-quarters more tipples on that side of the ovens than there are on this, as near as I can explain without seeing the map.

Cross-examination.

By MR. GILFILLAN:

Q. Did you ever measure that line?

A. Not with a tape line, no, sir. I am giving approximate distances.

Q. And you are giving them as of now, are you not? You do not know anything about this thing in 1899 and 1900?

A. No, sir; 1903, 1904, 1905.

Q. All that you have been testifying to begins with 1903?

A. I never saw the plant before 1903.

Q. Either or any of them?

A. I have seen the others before.

Q. Have you ever seen the Gallitzin before?

A. I saw the entrance, but I never went back before 1903.

Q. Your observation of the other was simply casual? It was not under your control?

A. No, sir; I am somewhat of a surveyor and I have some kind of an idea of distances.

Q. What were the grades between 1897 and 1901 at the Altoona mine?

A. I was not there, I could not tell you. Today they are an average of 4% in the 160 to 200 feet to the mile.

Q. You do not mean to say that the Altoona today is 4%, do you, or are you sure of it?

A. I did not measure it, as I said.

Q. You are assuming it at that?

A. I know from the bench marks which prevail through that country that Gallitzin is about 2500 feet above the sea level, and that the Horse Shoe Curve is about 1250 or 1300 feet above the sea level, or a difference of about 800 feet between the two points. The top of this Altoona Coal and Coke Company proposition being nearly or more than the level of the Gallitzin property, the distance divided by that 800 feet will give you a varying grade of 160 feet to a little over 200.

Q. Do you know what the Glen White is more definitely than what you have given at Altoona?

A. Any more definitely? Just in the same way, by observation and knowledge of grades on railroads. Looking at it I would say that it was running at a three to four per cent. grade.

Q. What about the Glen White?

A. Three to four per cent. at the Glen White.

Q. The same at Altoona?

A. At Altoona it is a little more or less in places—fluctuating.

Q. The Glen White is not as long as the Altoona?

A. No, sir.

Q. The grade is in favor of the load at Glen White; that is to say, you draw the load up and take the empties down?

A. Yes, sir.

Q. And at Gallitzin the grade is against the load?

A. Yes, sir.

Q. Do you not know that it takes three engines sometimes to pull a train out from Gallitzin?

A. Three engines?

Q. Yes. Do you not know it always takes three engines?

A. No; I do not know that it ever took three while I was there.

Q. Do you know anything about it?

A. Yes.

Q. Do you say it does not take three engines?

A. So far as I know, it never took three.

Q. Do you know?

A. I cannot testify positively any more than I know I have been there and have seen two engines there, and one worked at one place and one at another.

Q. Do you not know that they have been stalled there with two engines and had to send to Altoona for a third?

A. I have seen engines stall on a level track.

Q. Do you not know that they stalled there because they have not the power to pull it?

A. No, sir; I do not know that.

Q. You do not know anything about it during the period of this action, do you?

A. No, sir. May I answer that a little more fully? You speak about the stalling of the engine, which would create the impression by my answer that the engine was stalling because it could not pull the cars out, and it may have stalled because the engine was not in condition or the rail was bad, and it might have been on a level spot where it stalled. Your question would create the impression that it was stalling on account of a certain number of loaded cars.

Q. That is exactly the impression I want to create. That is what we claim is the fact, but I want to see whether you know it.

A. I do not know it positively. I have been there and have seen one engine pull them out very nicely.

By THE REFEREE:

Q. You say "them". You do not say how many cars.

A. Whatever cars there might have been. Whether it was the maximum number or not I would not care to say.

By MR. GILFILLAN:

Q. It is a fact that the grade is against the load, is it not?

A. Yes, sir; about three-quarters of a per cent. on the average, three-quarters of one per cent. against the load.

Q. What you meant by saying it had to be operated from Altoona was, I suppose, that Altoona was the headquarters of your operating department and this engine was operated from Altoona the same as everything is operated from Altoona in that particular section of the country?

A. Yes, sir.

Q. That is what you meant, is it not?

A. That is what I meant.

Q. You know, do you not, that it was an old Pennsylvania engine that the Glen White did use, bought it from the Pennsylvania?

A. Yes, sir.

Q. There would be no difficulty about an old Pennsylvania engine operating on either the Altoona or Glen White or the Gallitzin, would there?

A. There would be considerable difficulty for the reason that we could not employ help there to take care or run the engine away from Altoona, as an individual company can.

Q. Would not the same engine operate down at Altoona and would it not down at Glen White?

A. Not Glen White, no, sir. It would at Altoona, not at Glen White.

Q. Why not?

A. On account of the character of the railroad.

Q. Was it not at Glen White that the old Pennsylvania engine was used?

A. Not in my time.

Q. Glen White was the one at which they had a dinky.

A. They have a 37-ton engine.

Q. What you meant to convey to us was that by reason of the increased weight of the engine and the consequently increased carrying power of the rail that the engine at the present time could not be operated on that old rail that was used and is used perhaps today by the Altoona and the Glen White. That is so, is it not?

A. The two are different. The Glen White, "yes", and the Altoona "no".

Q. Why "no" for the Altoona?

A. It is a different kind of rail. You could use a 47-ton engine on the Altoona, but it will be very unwise to do it on the Glen White.

Q. Could you not have a shifter there? Have you not under your control there a shifting engine that could be used on the Altoona today?

A. With headquarters at Altoona, yes, sir.

Q. Have you no engine that could be used on the Glen White?

A. I do not think we have. It would have to be some old, obsolete class that I am not familiar with.

Q. That would be largely because of the imperfect condition of the track of the Glen White, would it not?

A. The alignment and the imperfect condition of the track.

Q. Do you know that the railroad made Mr. Mitch-

ell fix the tracks to suit the weight of the railroad engine at Gallitzin?

A. I do not know of such a thing. It was built that way originally here because it was laid down with the idea that the road engine would do the service, and did do the service.

Objected to.

THE REFEREE: The records speak for themselves.

By MR. GILFILLAN:

Q. Have you made a calculation as to what would be the cost per mile for carrying coal from the Altoona mines to the junction?

A. Nothing that I would like to testify to, for I do not know enough about their method of account or the mine they have.

Q. You know what the crew is on the Altoona, do you not?

A. If I say "yes", I am simply saying what another man told me, for I did not see but four or five men on the engines.

By THE REFEREE:

Q. Then your answer is, I suppose, you do not know?

A. I actually do not know.

By MR. GILFILLAN:

Q. What does it cost per ton to transport the coal from the Glen White mine from the junction with the railroad and from the Altoona Coal and Coke Company to the junction of the railroad?

MR. GOWEN: I object, because a question as to what is the present cost has nothing to do with the issue here, also because this is not cross-examination. I have not asked any questions as to the cost of operation, but merely as to the difference in conditions between the two operations.

Objection overruled and exception noted for defendant.

A. I could not say.

By THE REFEREE:

Q. You do not know; is not that it?

A. I do not know for the reason that a guess is not any knowledge.

By MR. GILFILLAN:

Q. All your observation as to these matters about which you are testifying to has occurred since 1903?

A. Yes, sir.

Q. And you know nothing about anything during the period of the action; that is, from 1897 to 1901?

A. Only inferentially.

Re-direct-examination.

By MR. GOWEN:

Q. You were asked by Mr. Gilfillan substantially if when you said the railroad company were to operate the Altoona and Glen White operations it would be necessary that the engine should be operated from Altoona, you meant simply that the engine's movement should be controlled from Altoona and that the engine itself should not run from Altoona and back to Altoona. What is the fact as to that?

A. I meant, and know it to be a fact, that we could not operate an engine and leave it up in the mountains, as an individual company does. The arrangement we have with our employees would not permit it. We would have to take that engine home every night and start it out in the morning from Altoona in order to get men to man it. Our men would not live in these coal mines as the employees of the coal company do. We have tried it and they will not do it. They want to get back to their homes at night and we cannot persuade employees to stay at the mines and operate an engine on a little spur by itself, although there are

places where it might be economical to do it that way. But you cannot get men to do it, therefore as a railroad company we have to operate from headquarters in several districts and concentrate our hostlers and coal-ing propositions, sanding, oiling and taking care of the locomotives at some one place.

Re-cross-examination.

By MR. GILFILLAN:

Q. Did you say it was five miles from Gallitzin mine to Altoona?

A. From the Gallitzin mine to the Altoona mine?

Q. Yes.

A. Over the hill, I do not suppose it is very far, but around by the railroad it is a very considerable distance.

Q. You said five miles.

A. I meant five miles from the junction of the Altoona Coal and Coke Company Railroad with the main line of the Pennsylvania Railroad Company by way of the back switches, to the top of the mountain where their last tipple is.

Q. Could you not take your empties from Altoona in the morning and bring the loaded cars back at night with the Altoona mine the same as you did with the Gallitzin mine?

A. Certainly, but the engine would have to stay on the branch all day to get the empties up and the load down.

Q. That is all you mean, is it not?

A. That is exactly what he asked me and I answered "yes".

Q. You sent the engine from Altoona with the empties in the morning to the Gallitzin mine, and you brought the load back at night?

A. With the road engine, yes. The other would have to be a special engine.

Q. When you say a special engine you mean an engine specially assigned for those two operations?

A. That could not be used in connection with other operations. The operation at No. 10 is by a road engine from Altoona that serves not only No. 10 every day, but several others at the same time, and at the Altoona Coal and Coke Company you could not serve several others with the same power at the same time, for the reason that it would be on that branch all day getting empties up the mountain and loads down.

Q. All you mean is that it would take a little longer or considerably longer, in your estimation, to serve Altoona than the other?

A. And an especial class of engine.

Q. Why could you not on the Altoona branch use a Pennsylvania engine?

A. Not a regular road engine, no.

Q. Could you not have used there the engine that you were using seven or eight years ago?

A. I do not know what they had. I do not know what class of engine they had there.

By THE REFEREE:

Q. Your answer is that you do not know.

A. I am trying to convey to the Referee an answer to the several questions that if we were to be ordered to operate it ourselves, that we would operate it the way I indicated, a special engine with a crew at Altoona, instead of the regular road engine which we are using in operating the mine at No. 10 in connection with serving several others with the same road engine.

O. H. HOBBS, having been duly sworn, was examined as follows:

By MR. GOWEN:

Q. Where do you reside?

A. Baltimore.

Q. With what railroad company are you connected?

A. The Baltimore & Ohio Railroad Company.

Q. What position do you hold?

A. Superintendent of the Baltimore Division.

Q. What does that division cover?

A. It takes all the terminals in and about Baltimore, the Washington Branch, the Metropolitan Branch, the Alexandria Branch, the Washington County Branch, the Frederick County Branch and the Main Line.

Q. How long have you held that position?

A. I have been superintendent on the Baltimore Division for a year. I came from the Connellsville Division previously.

Q. What does the Connellsville Division embrace?

A. The Connellsville Division embraces the main line from Connellsville to Cumberland, 97 miles. It takes in the Fairmount, Morburton and Pittsburg branch. It takes in the Somerset and Cumberland branch, 45 miles; the Wesley branch, 14 miles; the Jerome branch, 4.6 miles; the Wilson Creek branch, 3 miles.

Q. And numerous other small branches?

A. All the branches in that territory, principally coal and coke operations.

Q. The Connellsville Division then included a large number of branches originating in coal?

A. Originating in coal and coke.

Q. How long were you superintendent of that division?

A. Two years.

Q. Prior to that what position had you held with the Baltimore & Ohio Railroad?

A. Train master.

Q. In what division was that?

A. I was on the Cumberland Division for seven years. That comprises the territory between Grafton and Brunswick. Previous to that I was train master on the Baltimore Division for three years.

Q. Is the Cumberland Division a coal division also?

A. Partly. The west end of the Cumberland Division is principally coal, and they have a few coke operations worked in connection with the coal mines.

By THE REFEREE:

Q. What State is that in?

A. West Virginia.

By MR. GOWEN:

Q. The Connellsville district is exclusively in Pennsylvania?

A. Pennsylvania, yes, sir; Pennsylvania and partly in West Virginia.

Q. Have you made any examination of the branches connecting the operations of the Altoona Coal and Coke Company and of the Glen White Coal and Lumber Company with the main line of the Pennsylvania Railroad?

A. I have.

Q. And have you also examined the branch or spur connecting the Gallitzin No. 10 with the Pennsylvania Railroad?

A. I have, yes, sir.

Q. When did you make the examination?

A. Yesterday.

By MR. GILFILLAN:

Q. On all?

A. Yes.

By MR. GOWEN:

Q. I wish you would say whether, in your judgment as an operating officer, the conditions affecting the operation of the three branches at those operations are similar or are dissimilar, and if you say they are dissimilar, just state in what respects they are dissimilar.

(Objected to.)

(Objection overruled and exception noted for plaintiff.)

A. They are very much dissimilar. In the first place, the Gallitzin mine can be handled by road engines, road crews.

By THE REFEREE:

Q. Will you not please explain what you mean when you say road crew?

A. What I term a road crew is any engine that is used in road service on a division. They could take the empty cars and push them off to the Gallitzin; they could go in there and pull the loaded cars out with a very small delay, or I would judge from my opinion at the longest it would take from twenty to thirty minutes to perform the operation. The Glen White it is impractical to run a road engine, from the fact that the grades are so steep and the physical conditions of the road would not admit it. In other words, I would not like to take a chance going over the road from the Glen White Division. Now the Altoona Coal and Coke Company property means the same thing, that it would not be practicable to operate a road engine over this branch, from the same causes, the physical conditions would not admit it, the curvature and the grade. Furthermore, admitting that you could operate it with a road engine, both the roads would have to be practically rebuilt. My observation was that they have 45-pound rail on the Glen White branch and they have 56 and 67-pound rail on the Altoona Coal and Coke Company branch. That is only on the curves, where they have the heavier rail.

By MR. GOWEN:

Q. How would it be as to the time that would be consumed at the Glen White and Altoona branches in handling cars as compared to that which is consumed at the Gallitzin mine?

A. That would have to be figured, at least I would

figure it, against the grade, and that you could take any class of engine and push any amount of cars into the Gallitzin mine, and you can only operate a certain number of cars over the Glen White road, from the fact that the grades are prohibitive and the time consumed I would say, one to four, taking the same distance, that is, comparing a thousand feet of the Gallitzin mine against a thousand feet of the Glen White or the Altoona Coal and Coke Company.

By THE REFEREE:

Q. In favor of which would it be?

A. The Glen White and the Altoona, owing to the grade.

Q. It would take four times as long there; is that what you mean?

A. Yes, sir.

By MR. GOWEN:

Q. For the same distance?

A. For the same distance. By that I mean as a whole, in comparison against your grades, your operations. The grade limits your load or your empties. In other words, if you were to put four empty cars into the Gallitzin mine it would take four times as long. I would figure it would take four times as long to place four cars or handle four cars on the Glen White or the Altoona, on account of the difference in the grade.

Cross-examination.

By MR. GILFILLAN:

Q. It would not take four times as long to draw four loaded cars from the Altoona or Glen White operation to the junction as it would from the Gallitzin operation to the junction, would it?

A. I would consider it would take longer.

Q. Would they not really draw themselves?

A. The factor of safety would have to be considered. With the grade at the Gallitzin mine it is a

matter of putting on power to pull the number of tons out of there and it is a matter of safety of bringing the crew from the Glen White and the Altoona Coal and Coke Company operation safely from their mines down to the junction point.

Q. All your knowledge about all these conditions was derived from your visit yesterday?

A. Yes.

Q. If the Glen White and the Altoona people put in good rails—up-to-date rails—the road engine could operate, could it not?

A. It could be operated with a certain class of engine.

Q. One of the classes that the Pennsylvania Railroad has?

A. Not a road engine.

Q. Perhaps not a road engine, but an engine that they have?

A. You would have to have a specially adapted engine from the fact that the curvature is so great that certain engines would not take the curves, and the factor of safety and carrying water in the boiler would enter into a great deal, on account of the steepness of the grade.

Q. Take the engine that the Pennsylvania Railroad used probably seven or eight years ago. Could it not have been done then very easily?

A. I could not answer that question, because I do not know the class of engine that the Pennsylvania Railroad used seven or eight years ago.

Q. Did you make any calculation as to the cost of carrying coal from the Altoona mine to the junction or from the Glen White operation to the junction with the railroad?

A. No, sir; I had not anything to base a calculation on.

Q. You did not do it, any way?

A. No, sir.

It is agreed between counsel for plaintiff and defendant that the grades and curvatures on the sidings from the junction of the railroad and the operations of the Altoona Coal and Coke Company, from the junction of the railroad to the operations of the Glen White Coal and Lumber Company, and from the junction of the railroad to the Mitchell Coal and Coke Company at Gallitzin, are the same today as they were during the period of this action.

Adjourned until Wednesday, November 13th, 1907, at 10.30 A. M.

Wednesday, November 13th, 1907, 10.30 A. M.

Present:

HON. THEODORE F. JENKINS, Referee;
JOSEPH GILFILLAN, Esq., for Plaintiff;
FRANCIS I. GOWEN, Esq., for Defendant.

WILLIAM M. SMITH, having been duly sworn, was examined as follows:

By MR. GILFILLAN:

Q. Where do you now reside?

A. At Evansburg, Pennsylvania.

Q. Were you employed at the Mitchell Coal and Coke Company's mine at Gallitzin?

A. I was.

Q. From what time to what time?

A. From June, 1886, until May, 1901.

Q. Fifteen years?

A. Yes, sir.

Q. Will you tell the Referee what length of time it took the railroad to put in a train and take it out

prior to the time when you put your own locomotive on at Gallitzin?

Mr. Gowen objects on the ground that this is testimony relating to the claim which should have been given in chief and is not proper in rebuttal.

Objection overruled.

A. From three to five hours.

Q. You were there, were you?

A. I was there, yes, sir.

Q. You saw it done?

A. Yes, sir.

Q. Every day?

A. Daily.

Cross-examination.

By MR. GOWEN :

Q. When you say it took from three to five hours, how many cars were moved in that time?

A. There would be from twenty-five to twenty-eight, and as high as thirty cars.

Q. The time it would take, of course, varied with the number of cars to be moved, did it?

A. Yes, sir.

Q. How much? What variance was there?

A. An hour, perhaps, to an hour and a half.

Q. Do you mean that if there were twenty-five cars to be moved it would take an hour or an hour and a half less than if there were thirty-five?

A. Yes.

Re-direct-examination.

By MR. GILFILLAN :

Q. What was your position at the mine during that time?

A. Superintendent.

MATTHEW P. FREDERICK, having been duly sworn, was examined as follows:

By MR. GILFILLAN:

Q. Where do you now reside?

A. Gallitzin, Cambria County, Pennsylvania.

Q. Were you employed at the Mitchell Coal and Coke Company's mine at Gallitzin?

A. I was.

Q. From what time to what time?

A. From 1896 until 1899, and was returned there in January, 1900, and was there up until some time in 1901. I think about May.

Q. What was your position?

A. Shipping clerk.

Q. Do you remember when the locomotive was put on by the Mitchell Coal and Coke Company?

A. I was in Philadelphia at that time. That was, I think, in 1900 or 1899, along there.

Q. Were you up at the mine there prior to the time that the locomotive was put on?

A. I was.

Q. Did you see the railroad put the trains in and take them out?

A. Every day.

Q. Tell the Referee how long it would take them to move a train.

A. I think from three to four hours, according to the size of the train.

Q. What were the trains, usually, what length?

A. From my recollection, they would run from twenty-five to forty cars. Forty cars was an extra large train.

Q. I suppose the longer the train the longer the time?

A. The longer it would take.

Q. How many engines would it take and how many crews to move the train?

A. There were always two engines came in regu-

larly, and they often called on a third engine to get the train out.

Q. Why was that?

A. On account of the train being too large to move by the two engines they would call on the extra.

Q. How large a train? You say the trains usually ran from twenty-five to forty cars?

A. I think from twenty-five to forty. Forty was an extra large train.

Q. Was the grade there in favor of or against the load?

A. It was against the load. All had to be hauled up hill.

Cross-examination.

By MR. GOWEN:

Q. How long was the siding during the period you are speaking of?

A. I couldn't give you the distance of the siding.

Q. Describe what was located on the siding at that time in the way of tipples and ovens.

A. There was one coal tipple, and, I think, about one hundred and eighty ovens part of the time, and then the ovens were increased, extended.

Q. Were these ovens in one batch, together, or were they separate?

A. No, sir. There was one line of ovens, and then there was what they called a double block, separated the other ovens; a track on either side.

Q. When did you say you went there?

A. In 1896.

Q. In 1896 how many ovens were there on the siding?

(Objected to by Mr. Gilfillan as not cross-examination.)

(Objection overruled.)

(Exception noted for plaintiff.)

A. I could not give it to you off-hand, this length of time.

Q. I show you a map which has been given in evidence in this case, which is marked "Plan and Profile of the Tracks of the Pennsylvania Coal and Coke Company near Gallitzin", and I will ask you to indicate on that map, if you are able to do so from recollection, what coke ovens were in existence which are shown thereon in 1896.

A. This double block of ovens here and this block from here up. (Double block of ovens marked on map "43 Coke Ovens" and the other block of ovens marked "25 Coke Ovens"). There is a double block comes in here and this overhead bridge up to here. That is called a double block. That is a double row of ovens there, ovens on both sides. Here is a single block and here is a single block.

By MR. GILFILLAN:

Q. They are not shown on the map.

A. They are shown here but do not show the number. This is intended for ovens here, I believe. (Indicating on map.)

By JUDGE JENKINS:

Q. From above station 30 down to where? From a point north of Station 30 to where?

A. Down to the tipple. Understand, from this overhead bridge there is a double block of ovens in there, a section of what they call double block; there are ovens on both sides, but there is no track at the rear, at the back of that one block.

By MR. GOWEN:

Q. When did you leave there and come to Philadelphia?

A. In 1899.

Q. What time of the year?

A. I think in April.

Q. Had there been any other ovens added before you left?

A. There had been a block of nine, this block right here. (Block of ovens on the curve opposite where it is marked on the map "Maximum Curvature, This Curve $24^{\circ} 30'$ ".)

Q. Please state just what service or what work the engines did during the time preceding April, 1899, in delivering and placing and taking out cars from the siding.

A. They placed the empty cars on these tracks at the upper end above the tipple and above the coke ovens; between the tipple and the railroad they placed the empty cars, coal and coke.

Q. What else did they do?

A. Then they ran their engines down and caught the loaded cars and brought them out to the main line.

By MR. GILFILLAN:

Q. Where did they catch the loaded cars?

A. Down as far as they would be, possibly at the lower end of these ovens. (At the end of place marked "43 Coke Ovens" on the map.) That is, on that siding on this side as far as the track extended. It extended a short distance below here. (Indicating a short distance below where it is marked on the map "43 Coke Ovens".)

By MR. GOWEN:

Q. What distance did they have to bring the empties in on this siding?

A. I do not know what the distance is. Do you mean from the main line?

Q. Yes.

A. They brought them in to these switches, whatever distance that is.

Q. Accepting this map as accurate, they brought them in to about Station 10, did they?

A. They brought them in past that, so their main track was clear that they could get below.

Q. We will say they were brought in between Station 10 and Station 20?

A. Yes, sir.

Q. What distance is that? What distance are the stations apart?

A. I do not know. I could not give you that. I do not know the distance between those stations.

Q. You have told us all, have you, that the engines did in delivering and taking out the cars?

A. Yes, sir; that is all they did. Delivered the empties and took out the loads.

Q. When did Mr. Mitchell put his engine on?

A. That was put on while I was in Philadelphia. I do not know the exact date.

Q. You know, as a matter of fact, that after that was put on all the work was done by that one engine?

A. I know from 1900 until 1901, as long as I was there, it was.

Q. In addition to doing the work which you say the Railroad engines did at first, that engine did a large amount of other work, did it not, in spotting cars, placing them?

A. The Pennsylvania engines ran them back to there. (Indicating beyond Station 10.) They brought them on the car tracks, what they called the empty car tracks.

Q. When did they do that?

A. On their regular trip.

Q. Do you mean after Mr. Mitchell got his engine?

A. Yes.

Q. After Mr. Mitchell got his engine the Pennsylvania Railroad engines continued to deliver the cars in the manner in which they had formerly been delivered?

A. On their empty side tracks.

Q. How about taking out the loads?

A. The loads were placed up here on this right-hand track. (Indicating outside track between Station 10 and the main line.)

Q. The Pennsylvania Railroad engines, then, came in and got the cars—

A. Pushed the empties on this empty siding and put their helper in behind and coupled their head engine on and were ready to leave.

Re-direct-examination.

By MR. GILFILLAN :

Q. The engines of the Pennsylvania Railroad shoved the cars in from the main line and then Mitchell's engine did the rest of the work.

A. Yes, sir.

Q. And then brought them down loaded?

A. Yes, sir.

Adjourned until Wednesday, November 20th, 1907, at 10:30 a. m.

Meeting November 20, 1907, 10.30 a. m.

Present:

THEODORE F. JENKINS, Esq., Referee.

JOSEPH GILFILLAN, Esq., for Plaintiff.

FRANCIS I. GOWEN, Esq., for Defendant.

JAMES L. MITCHELL, recalled by Mr. Gowen for further cross-examination, and examined as follows:

By MR. GOWEN :

Q. I wish you would state over what lines of railroad shipments made of coal and coke from the coal regions of Pennsylvania would pass which were destined to Newark, New Jersey?

A. Mostly Pennsylvania Railroad, I think. There might have been a little that went by the New Jersey Central, I am not positive.

Q. I am not speaking of your shipments, but I am speaking of shipments made generally.

A. Over the Pennsylvania Railroad.

Q. The shipments could move also by the Pennsylvania Railroad and Central Railroad of New Jersey; is that true?

A. I think so.

Q. Was it not a fact that in respect to consignees located on the lines of the Central Railroad of New Jersey at Newark that the shipments to Newark would move via the Pennsylvania Railroad and the Central of New Jersey?

A. I could not say as to that. I do not know.

Q. Then you do not know to what extent your shipments to Newark moved over the Pennsylvania alone and to what extent they moved over the Pennsylvania Railroad and the Central Railroad of New Jersey?

A. I could not tell without looking it up.

Q. Catasauqua, Pennsylvania, is not located on the Pennsylvania Railroad lines, is it?

A. No, sir; Lehigh Valley.

Q. Lehigh Valley and what other railroad reaches it?

A. I think there is some little short road, some coke road there, I am not positive—the Catasauqua and Fogelsville. I am not positive of that.

Q. Shipments can be made to Catasauqua?

A. On the Lehigh Valley road, yes, sir.

Q. How about the Central Railroad of New Jersey?

A. And over the Central Railroad of New Jersey, too.

Q. So that shipments of coal and coke which originated on the Pennsylvania Railroad destined to Catasauqua would be delivered either by the Central Railroad of New Jersey or by the Lehigh Valley?

A. I think so.

Q. Was that true also as to Hokendauqua?

A. I think that is on the Lehigh Valley.

Q. How as to Parryville?

A. I think Parryville is Lehigh Valley. I am not positive.

Q. You do not know that it is reached by the Central Railroad of New Jersey also?

A. I could not tell.

Q. How about Allentown?

A. It is reached by both roads, by the Lehigh Valley and Central Railroad of New Jersey.

Q. And also by the Philadelphia & Reading, is it not?

A. The Reading have a branch, I think, from Allentown to Harrisburg. The Lehigh Valley passengers, I know, change cars at Allentown, and take the Reading to Harrisburg.

Q. So that shipments of coal and coke which originated on the line of the Pennsylvania Railroad could reach Allentown either by the Lehigh Valley or Central of New Jersey or the Reading systems?

A. Yes, sir. I do not think I ever shipped anything over the Reading.

Q. Neither Allentown, Catasauqua, Parryville or Hokendauqua are on the line of the Pennsylvania Railroad?

A. No, sir.

By MR. GILFILLAN:

Q. At the last meeting it was testified that after you got a locomotive at Gallitzin that the empties were shunted in by the Pennsylvania Railroad into the Gallitzin mine?

A. Yes, sir. I can explain that better with a map.

Q. I want you to tell the Referee just what proportion of the work the shifting in of empties constitutes?

A. It took probably ten or fifteen per cent. of the time.

(A map of the operation was placed before the witness.)

Q. Explain how many tracks there are on what is called the siding and the operation fully.

A. It is all two and three tracks.

Q. That is, the siding is two and three tracks?

A. Yes. The branch from the main line of the Pennsylvania Road, the switch of the siding of the Mitchell Coal and Coke Company at Gallitzin is up near the signal bridge, and very often through trains came along and picked out cars and threw over the switch into the electric light house on our siding and about noon usually, if we did not need the cars before, we hauled them in there with horses or, after we got the locomotive, with the locomotive. At noon the regular coal train came in and brought the balance of the cars we needed. They always had two engines and sometimes three, and after we got the locomotive we made up our train and hauled the loaded cars, placed them between the tipple and switch at the main line. After this time the coal train came in, there were two engines, and if there were any cars on this track that had been drawn in or they brought in, they pushed them down to this station "Zero" or at Church St., and to clear the main track they pushed them into the empty car siding at "Zero" or Church Street, to clear the track so they could get one of their engines in behind the made up coal train that was made up by our engine.

By THE REFEREE:

Q. That was beyond this lumber mill?

A. Yes, sir; beyond this lumber mill. I haven't that quite right. They had to push them down to Station 10. The siding was beyond Station 10 and towards Station 20, and on the right hand or outside of the track. Then their engine ran from Station 10 to Station 20, that is, one of the regular coal train engines and got behind this made up coal and coke train which was between Station 20 and the main line near signal bridge.

By MR. GILFILLAN:

Q. As I understand it, on what you call your siding, there were two tracks, and for part of the way a third track?

A. Yes; most of the way.

Q. And the railroad company would shunt the cars in from the switch at the junction, from the switch below the signal bridge as appears on the map?

A. Yes, sir.

Q. When your engine would make up the loaded train from the point at and beyond the tipple?

A. Make up the loaded train from beyond the tipple.

Q. And would bring the loaded train down toward the junction with the railroad?

A. Yes, sir.

Q. If there were some empties on one of these tracks and the train required an extra engine to get behind this loaded train that you had made up, the empties would be on the third track?

A. Yes, sir; the third or regular empty track.

Q. The one engine would be attached to the train on the track on which the loaded cars were, and the other would go up the other or second track and switch over and get behind the train on the loaded track, so to speak?

A. Yes; there were usually two engines on the front and one on the rear, too.

Q. And then the cars would be pushed out on to the main line?

A. Yes.

Q. I want to know what was the principal work of the engine. Was it in connection with those empties or was it in connection with making up the load?

A. There was no work with the empties. The principal work was making up the loaded train and hauling it up from Station 20 to the main line.

Q. The loaded cars were made up from between the tipple and what?

A. About Station 50.

Q. And then were taken to the line of the Pennsylvania Railroad?

A. Yes, sir; being up grade all the way.

Q. I want to ask you about the operation of the Glen White and Altoona. Was the main work there with the empties or with the loaded cars?

A. Their main work was with the empty cars.

Q. The empties went up the hill and in your case the loads went up the hill?

A. Yes, sir.

Q. By the loads, you mean the loaded cars?

A. Yes.

By MR. GOWEN:

Q. I wish you would indicate on the map just where your siding ended at the time you purchased the locomotive.

A. I would judge between Station 40 and 50.

Q. Had you at that time any of that batch of 332 coke ovens constructed which are now marked on the plan?

A. No, sir.

Q. What was the furthest point then at which any coke ovens were erected?

A. There were about ten of them at Curve 2430 and the following spring there were fifty completed in the block at that Curve No. 2430.

Q. At the time you sold your property to the Webster Coal and Coke Company what if any additional ovens had been constructed in addition to those?

A. Only this block of fifty at Curve 2430.

By MR. GILFILLAN:

Q. Was the limit of the coke ovens in this block marked Curve 2430 at the time in 1901, do you know?

A. I am not positive, but I think the end of the block marked Curve 2430 was the end of it.

Q. Had you anything here between Stations 40 and 50?

A. Our tracks ran down there to hold the loaded cars. Our tracks always had to go beyond the ovens there.

Q. You had tracks at that time up to Station 50?

A. Up to Station 50.

WILLIAM L. SCOTT, recalled.

By MR. GOWEN:

Q. What books have you with you?

A. Copies of invoices for coal and coke of the Mitchell Coal and Coke Company.

Q. Covering what period?

A. September, 1898, to May 1st, 1901.

Q. Are they divided as between shipments made from the various operations?

A. No, not in all cases. The coke is, but not the coal.

Q. Can you refer to the invoices covering the shipments of coke from the Gallitzin operation, readily?

A. Yes.

Q. Referring to the period between March 1st, 1899, and May 1st, 1901, can you tell us whether the coke sold by the Mitchell Coal and Coke Company to the New Jersey Zinc Company, which was shipped from the ovens at the Gallitzin operation was sold f. o. b. the mines or at a delivered price at destination?

A. By referring to copies of the bills. I suppose it would be necessary to go over the whole matter month to month. I have here copies of the bills in 1900 which were at price f. o. b. ovens.

Q. I wish you would tell me what the volume of the shipments were that were made in that way and the month they were made, from those bills?

A. You mean the number of tons?

Q. Yes.

A. For each month covering that period?

Q. Yes; what month have you there?

A. I have September, 1900. Of course, it was my recollection that there was not very much before that time to the New Jersey Zinc Company. I would not say whether there was any at all or not previous to September, 1900.

Q. There were shipments, were there, made from the Gallitzin operation in September, 1900, to the New Jersey Zinc Company at Newark?

A. I have here Hazard and South Bethlehem. I presume there were shipments to the other furnaces, too.

Q. I should have confined my question to shipments to Newark.

A. Yes; to Newark, or the Hackensack furnace, the same thing as Newark.

Q. Can you give us the volume? What month have you?

A. September, 1900; 225 tons.

Q. That was sold f. o. b. the mines?

A. F. o. b. ovens; yes, sir.

Q. Will you go on then, month by month?

A. October, 1900; 2159 tons.

Q. Was that also f. o. b. the ovens?

A. F. o. b. ovens; yes, sir.

November, 1900; 1,982 tons, f. o. b. ovens.

Q. Do these statements cover coke shipped from other operations than Gallitzin or are they confined to the Gallitzin?

A. These bills, yes, sir.

Q. They cover all the shipments to the New Jersey Zinc Company at Newark?

A. Yes, sir.

Q. Please continue your statement.

A. December, 1900, 1,735 tons f. o. b. ovens.

January, 1901, 3,422 tons, f. o. b. ovens.

February, 1901, 2,766 tons, f. o. b. ovens.

March, 1901, 2,784 tons, f. o. b. ovens.

April, 1901, 1,698 tons, f. o. b. ovens.

Q. Will you refer to the invoices of coke sold to the Carbon Iron and Steel Company Parryville, Pa., the Thomas Iron Company and the Crane Iron Company at Catasauqua and the Allentown Iron Company at Allentown, during the period March 1st, 1899, to April, 1901, and tell us also whether those sales were made f. o. b. the ovens or at a delivered price at destination?

A. Separating the Hastings Coke and Gallitzin coke, or do you want them both combined?

Q. Is there any distinction between the sale f. o. b. and delivered price at destination?

A. They are both sold delivered price at destination.

Q. Then there is no reason for separating them.

A. Crane Iron Works, Catasauqua, March, 1899, 4,055 tons, delivered Catasauqua at a delivered price.

Carbon Iron and Steel Company, March, 1899, 439 tons delivered at Parryville at a delivered price.

Allentown Iron Company, March, 1899, 383 tons, delivered at Allentown at a delivered price.

April, 1899. Crane Iron Works 2,651 tons f. o. b. Catasauqua.

Q. I notice the heading there is "Messrs. Pilling and Crane". What does that indicate?

A. They were selling agents for this coke. It was sold through them.

Q. What was your arrangement? Who paid you for the coke?

A. I am not familiar with that.

Q. Is that a copy of an invoice which was rendered Messrs. Pilling and Crane?

A. Yes; it is against Pilling and Crane.

Q. Then you sent no invoice to the Crane Iron Company?

A. No.

Q. You do not know, you say, what price Messrs. Pilling and Crane paid for this coke?

A. This is the price they paid for the coke. It was billed to them.

Q. What price did they pay? What does that show?

A. Crane Iron Works was \$2.58 per ton of coke of 2000 pounds f. o. b. Catasauqua.

Q. That is as to the shipments made to the Crane Iron Company?

A. Yes, sir.

Q. Please continue your statement.

A. Allentown Iron Company, April, 1899, 677 tons, f. o. b. Allentown.

Q. That invoice shows also that that invoice was rendered to Messrs. Pilling and Crane and not to the Allentown Iron Company, does it not?

A. Yes.

Q. Is that true with respect to all the invoices to which you have been testifying, with the exception of the New Jersey Zinc and Lead Company?

A. It is true of all of these four firms, the Carbon Iron and Steel Company, the Thomas Iron Company, the Allentown Iron Works and the Crane Iron Company.

Q. So that all the invoices on account of shipments made to those four firms were rendered to Messrs. Pilling and Crane, and so far as your invoices indicate, the payments for that coke were made by Messrs. Pilling and Crane?

A. The coke was invoiced to them. I do not know anything about the rest.

Q. Will you please go on with reference to your statement and if any of these show that the invoices were not rendered to Messrs. Pilling and Crane, just refer to the fact as you go through them.

A. Carbon Iron and Steel Company, April, 1899, 190 tons, f. o. b. Parryville.

Nothing to Thomas Iron Company in April, 1899.

May, 1899, Crane Iron Works, 3,853 tons, f. o. b. Catasauqua.

Allentown Iron Works, 1,107 tons, f. o. b. Allentown.

Carbon Iron and Steel Company, 746 tons, f. o. b. Parryville.

Nothing to Thomas Iron Company.

June, 1899, Crane Iron Works, 3,213 tons, f. o. b. Catasauqua.

Allentown Iron Works 758 tons, f. o. b. Allentown.

Carbon Iron and Steel Company, 855 tons, f. o. b. Parryville.

Nothing to Thomas Iron Works.

July, 1899. Crane Iron Works, 2,149 tons, f. o. b. Catasauqua.

Carbon Iron and Steel Company, 964 tons, f. o. b. Parryville.

Nothing to Allentown Iron Works or Thomas Iron Company.

August, 1899. Crane Iron Works, 3,438 tons, f. o. b. Catasauqua.

Carbon Iron and Steel Company, 903 tons, f. o. b. Parryville.

Allentown Iron Works, 1,115 tons f. o. b. Allentown.

Nothing to Thomas Iron Company.

September, 1899. Crane Iron Works, 2,903 tons, f. o. b. Catasauqua.

Allentown Iron Works, 1,698 tons, f. o. b. Allentown.

Carbon Iron and Steel Company, 717 tons, f. o. b. Parryville.

Nothing to Thomas Iron Company.

October, 1899. Crane Iron Works, 3,606 tons, f. o. b. Catasauqua.

Allentown Iron Works, 2,291 tons, f. o. b. Allentown.

Carbon Iron and Steel Company, 592 tons, f. o. b. Parryville.

Nothing to Thomas Iron Company.

November, 1899. Crane Iron Works, 3,972 tons, f. o. b. Catasauqua.

Allentown Iron Works, 2,318 tons, f. o. b. Allentown.

Carbon Iron and Steel Company, 628 tons f. o. b. Parryville.

Nothing to Thomas Iron Company.

December, 1899. Crane Iron Works, 3,798 tons, f. o. b. Catasauqua.

Carbon Iron and Steel Company, 393 tons, f. o. b. Parryville.

Q. In all those statements you have referred to, you have said that the sale was f. o. b. or was at a delivered price at destination?

Q. Please state what those statements show in respect to the amount which was paid by the persons or concerns purchasing the coal. For instance, referring to statement of shipments of coke made to the Carbon Iron and Steel Company during the month of December, 1899, at the foot of the statement is found this: "393.05 tons at \$3.00 less freight \$1.50." That indicates, does it not, that the settlement was made by Messrs. Pilling and Crane at a price representing the difference between \$3.00 and \$1.50, does it not?

A. Yes.

Q. So that they were not charged with the delivered price at the point of destination?

A. We considered they were charged with the delivered price at destination and credited with the freight.

Q. In point of fact, all they paid was the delivered price less the freight rate.

A. Yes; what was paid to us.

Q. And that is true as to all the statements to which you have been referring, is it not?

A. Yes.

Q. Will you please continue your statement?

A. December, 1899, Allentown Iron Works, 2,673 tons, f. o. b. Allentown.

Nothing to Thomas Iron Company.

January, 1900, Crane Iron Works, 3,275 tons, f. o. b. Catasauqua.

Allentown Iron Works, 1,926 tons, f. o. b. Allentown.

Carbon Iron and Steel Company, 817 tons, f. o. b. Parryville.

Q. I will not ask you to go through all the months. Please take the months of October and November in 1900. Just refer to those two months and give us what those statements show for those four concerns?

A. October, 1900, Carbon Iron and Steel Company, 1,480 tons, f. o. b. ovens.

Q. That was still a sale by an invoice made out to Messrs. Pilling and Crane?

A. Yes.

Q. Will you just go on then with the others for October and November?

A. Allentown Iron Company, October, 1900, 1,062 tons, f. o. b. ovens.

Crane Iron Works, 4,831 tons, f. o. b. Catasauqua.

Thomas Iron Company, 1,488 tons, f. o. b. ovens.

November, 1900. Crane Iron Works, 3,147 tons, f. o. b. Catasauqua.

Carbon Iron and Steel Company, 1,328 tons, f.o.b. ovens.

Allentown Iron Company, 1,332, tons f. o. b. ovens.

Thomas Iron Company, 1,681 tons, f. o. b. ovens.

That is October and November.

Q. Are you able to say without referring to the statements whether or not after that date the shipments were not all f. o. b. ovens, or is it necessary to refer to your statement?

A. After December, 1900? I will look at January, that is when it would start. Commencing with January, 1901, it all seems to have been billed at the ovens.

Q. Those four companies?

A. Yes, sir.

Q. How was it in December, 1900?

A. December, 1900, I gave the figures. It was all f. o. b. ovens except the Crane Iron Works, which was f. o. b. Catasauqua.

Q. Going back of October, 1900, will you tell us when the shipments commenced to be made f. o. b. ovens? Perhaps you had better work back from October. Give us September, 1900.

A. September, 1900. Carbon Iron and Steel Works, 1,080 tons, f. o. b. ovens.

Crane Iron Works, 4,075 tons f.o.b. Catasauqua.

Thomas Iron Company, 346 tons, f. o. b. ovens.

Allentown Iron Company, 971 tons, f. o. b. ovens.

August, 1900. Thomas Iron Company, 659 tons, f. o. b. ovens.

Carbon Iron and Steel Company, 434 tons, f. o. b. ovens.

Crane Iron Works, 4,628 tons, f. o. b. Catasauqua.

Allentown Iron Company, 196 tons, f. o. b. ovens.

July, 1900. Allentown Iron Company, 611 tons, f. o. b. ovens.

Carbon Iron and Steel Company, 908 tons, f. o. b. ovens.

Crane Iron Works, 3,585 tons, f.o.b. Catasauqua.

June, 1900. 744 tons, Carbon Iron and Steel Company, f. o. b. ovens.

Thomas Iron Company, 2,356 tons, f. o. b. ovens.

Crane Iron Works, 4,576 tons, f. o. b. Catasauqua.

May, 1900. Thomas Iron Company, 2,612 tons, f. o. b. ovens.

Allentown Iron Company, 3,114 tons, f. o. b. ovens.

Crane Iron Works, 4,107 tons, f. o. b. Catasauqua.

Carbon Iron & Steel Company, 276 tons, f. o. b. Parryville.

Allentown Iron Company, 2,478 tons, f. o. b. ovens.

Crane Iron Works, 3,468 tons, f. o. b. Catasauqua.

Thomas Iron Company, 1,372 tons, f. o. b. ovens.

March, 1900. Crane Iron Works, 3,401 tons, f. o.
b. Catasauqua.

Allentown Iron Works, 2,687 tons, f. o. b. ovens.

Thomas Iron Company, 2,178 tons, f. o. b. ovens.

Carbon Iron & Steel Company, 667 tons, f. o. b.
Parryville.

February, 1900. Carbon Iron and Steel Company
953 tons, f. o. b. Parryville.

Allentown Iron Works, 2,258 tons, f. o. b. ovens.

Crane Iron Works, 3,440 tons, f. o. b. Catasauqua.

Thomas Iron Works, 957 tons, f. o. b. ovens.

(Adjourned until Monday, November 25th,
1907, at 10:30 a. m.)

Meeting November 25th, 1907.

Present: Parties as before.

(Adjourned.)

Meeting December 10th, 1907.

Present: Parties as before.

(Adjourned until Wednesday, December 11th,
at 10:30 a. m.)

Meeting December 11th, 1907.

Present: Parties as before.

(Adjourned until Tuesday, December 17th, at
10:30 a. m.)

Meeting December 31st, 1907.

Present:

THEODORE F. JENKINS, Referee.

MESSRS. GILFILLAN and GOWEN.

CHARLES A. BUCH, recalled.

By MR. GOWEN:

Q. You are the manager of the Columbia Coal Mining Company?

A. I am.

Q. Have you the books of that company containing entries relating to the settlements made by it with the Latrobe Coal Company for coal purchased from the Latrobe Coal Company during the period between April 1st, 1897, and May 1st, 1901?

A. I have.

Q. Do the entries in those books show that in the case of all coal purchased by the Columbia Coal Mining Company from the Latrobe Coal Company, the price was based upon a price f. o. b. the mines?

A. They do.

Cross-examination.

By MR. GILFILLAN:

Q. Was all the coal that was purchased by the Columbia Coal Mining Company from the Latrobe Coal Company purchased in that way?

A. As far as I have looked over the books, they show it was all purchased on an f. o. b. price the mines from Latrobe and all other companies we purchased coal from.

Q. Who paid the freight?

A. The consignee.

Q. The consignee of whom?

A. The consignee to whom the Columbia Coal Mining Company sold this coal going from Latrobe.

Q. There was no coal purchased by the Columbia Coal Mining Company from Latrobe, or from the Altoona Coal & Coke Company or the Gien White Coal & Lumber Company, except where it was purchased f. o. b. the mine; is that correct?

A. That is correct with the exception of the case of prepaid stations?

Q. What about those?

A. There it was necessary for the Columbia Coal Mining Company to pay the freight.

Q. Do you know to whom the railroad looked for the freight on those shipments, what company was responsible for it?

Objected to. Objection overruled.

A. Which railroad?

Q. The Pennsylvania Railroad. To whom did it look for the freight? Who was responsible for the freight to the Pennsylvania Railroad on those shipments? What company?

A. The coal was sold to the Pennsylvania Railroad at an f. o. b. price at the mines.

Q. Sold to the Pennsylvania Railroad?

A. Sold to the Pennsylvania Railroad at an f.o.b. price at the mines.

Q. What about where it was not sold to the Pennsylvania Railroad?

A. I do not understand your question.

Q. The Columbia Coal Mining Company sold coal to others than the Pennsylvania Railroad, did it not?

A. It did.

Q. And it sold it at a price f. o. b. the mines?

A. Right.

Q. If there was any change in the rate, who was to pay that change? Do you know that?

A. The consignee.

Q. To whom did the Pennsylvania Railroad look? To the consignee or to the shipper, the Columbia Coal Mining Company?

A. To the consignee.

Q. Alone?

A. So far as the books show.

Q. Do you know anything about it?

A. No; I am basing on what our books show.

Q. Were you with the company during this period?

A. No.

Q. When did you go with them?

A. Between 1901 and 1902.

Q. You had nothing to do with the company between April, 1897, and down to May, 1901?

A. Not with the Columbia Coal Mining Company.

Re-direct-examination.

By MR. GOWEN:

Q. Can you refer to those entries now?

A. I can refer to such entries as are in those books. Here is the journal entry in April, 1897.

By THE REFEREE:

Q. Have you a diary book?

A. Here it is summarized for the previous month's shipments, for the coal and coke from different people, what the Columbia Coal Mining Company paid for that.

By MR. GILFILLAN:

Q. What do you mean by summarized?

A. The total tons of coal.

Q. Including all coal purchased from all collieries?

A. Yes.

Q. You purchased coal from collieries outside of the ones in which we are interested?

A. Yes. For example, here are 7,122 tons of coal bought from the Mitchell Coal and Coke Company, so much. Here are 600 tons, bought from the Puritan at 58 cents, gross tons.

Q. Take that entry of 7,122 and 11-20 tons of coal at 75 per gross ton. That does not show whether it is purchased f. o. b. the mines or at a delivered price, does

it? Is there anything else except what I have read off there?

A. There is something else to show that is a mine price.

Q. Is there anything in this journal that shows it is a mine price? There is nothing in this journal except what I have read, is there?

A. No.

Q. Then where do you get the other?

A. I guess the quickest way to get the other would be to take the freight rate that applied at that time, in April, 1897. It would show that the freight rate was probably a dollar and a half.

Q. You do not get that from that book?

A. It can be gotten from this book. I am not the bookkeeper. It is in this book.

By THE REFEREE:

Q. When you say "this book", you mean the sales book?

A. I speak of the sales book, yes, where the subdivision of this 7,100 tons is contained.

By MR. GILFILLAN:

Q. In a case of a car of coal sold by the Columbia or any other company to a consignee, and the coal is sold f. o. b. the mine, if the consignee does not take that coal, does not the railroad look to the shipping company, the Columbia Company or the Mitchell Company as it might be, who sold that coal to the consignee?

A. For the freight?

Q. For the freight.

A. Yes.

Q. So that ultimately it is the person who is shipping the coal from the mine, although sold to a consignee and the freight to be paid by the consignee, that is liable to the railroad for the freight in case anything happens that the consignee does not pay the freight?

A. Yes. At that time the freight rate on that coal was \$1.30 a ton.

By MR. GOWEN:

Q. That was the Mitchell coal you were speaking of?

A. That was 75 cents at that time, and then we paid the Puritan Coal Mining Company 58 cents and the Chest Creek Company 80 cents. The price appears to have been very low at that time.

Q. Will you please refer now to the journal entries showing the purchases month by month of coal by the Columbia Coal Mining Company from the Latrobe Coal Company, and give us the amount so purchased each month and the price paid therefor per ton.

A. In May, 1897, 29 and a fraction tons, at 70 cents gross.

June, 1897, 24 tons, at 70 cents gross. Nothing in July.

August, 1897, 41 tons at 70 cents gross.

September, 1897, 52 tons at 60 cents gross.

Nothing in October.

November, 85 tons at 60 cents gross.

December, 78 tons at 70 cents gross.

January, 1898, 48 tons at 70 cents gross.

Nothing in February.

March, 77 tons at 70 cents gross.

April, 25 tons at 70 cents gross.

May, 1,488 tons at 70 cents gross.

June, 88 tons at 65 cents gross.

July, 1,240 tons at 65 cents gross.

August, 381 tons at 65 cents gross. 1,131 tons at 70 cents gross.

September, 344 tons at 65 cents. 1,506 tons at 70 cents gross.

Also in September, 262 tons at 65 cents gross. 760 tons at 70 cents gross.

Nothing in October.

November, 103 tons at 70 cents gross.

December, 87 tons at 70 cents gross.

January, 1899, 196 tons at 70 cents gross.

February, 1,635 tons at 70 cents gross.

Nothing in March.

April, 100 tons at 70 cents gross.

May, 823 tons at 70 cents gross.

June, 92 tons at 70 cents gross.

June, 4,480 tons at 70 cents gross.

July, 1,773 tons at 70 cents gross.

Nothing in August.

September, 1,622 tons at 70 cents gross.

October, 663 tons at 70 cents gross. Also 317 tons at 70 cents gross.

Nothing in November.

December, 288 tons at 70 cents gross.

January, 1900, 26 tons at 70 cents gross.

February, 872 tons at \$1.00 net. Also 737 tons at \$1.25 net.

March, 550 tons at \$1.25 net.

April 580 tons at \$1.00 net.

May, 2,353 tons at \$1.00 net.

June, 2,100 tons at \$1.00 net.

July, 533 tons at \$1.00 net.

August, 1,629 tons at 94 cents net.

September, 1,213 tons at 90 cents net.

October, 2,169 tons at 91 cents net.

November, 1,525 tons at 90 cents, 95 cents and \$1.15.

December, 2,511 tons at 88 cents, 95 cents and \$1.15.

January, 1901, 4,752 tons at prices \$1.20 to \$1.42, total \$6,310.87.

January, 3,648 tons at 90 cents.

February, 2,681 tons at prices 90 cents to \$1.15, total \$2,720.31.

March, 3,434 tons at prices 84 cents to \$1.15, total \$3,117.00.

April, 2,785 tons at prices 88 cents to \$1.15, total \$2,625.84.

May, 2,322 tons, at prices 85 cents.

Q. Will you please state what amounts of coke the books show were purchased during the period named by the Columbia Coal Mining Company from the Latrobe Coal Company, and the prices paid per ton therefor?

A. Yes, sir.

(Examination suspended in order that the witness might examine the books.)

H. S. TAYLOR, having been duly sworn, was examined as follows:

By MR. GOWEN:

Q. Where do you reside?

A. Baltimore.

Q. You are the secretary of the Glen White Coal & Lumber Company, are you not?

A. Yes, sir.

Q. How long have you occupied that position?

A. Possibly fifteen or twenty years, I should say.

Q. So that between April 1st, 1897, and May 1st, 1901, you were the secretary of that company?

A. Yes, sir.

Q. What relation did you have to the sale of the coal of that company?

A. I generally made most of the sales, in fact nearly all of them.

Q. Did you have supervision of the sales department in that company?

A. Yes, sir.

Q. Were you therefore familiar with the method of selling the coal during that period?

A. Yes, sir.

Q. During the period that I have named, between April 1st, 1897, and May 1st, 1901, was the coal of the

Glen White Coal & Lumber Company sold f. o. b. the mines or was it sold at a delivered price?

A. In nearly every case, I would say in all cases, it was sold at the mines f. o. b. the mines. There may have been some isolated cases here and there where we, for the convenience of the consignee, prepaid the freight where there was no freight station; but in nearly all cases it was sold f. o. b. the mines.

Q. In cases of prepayment of freight, you paid the freight, as I understand it, simply on account of the consignee?

A. Yes, sir.

Q. And for his convenience?

A. Yes, sir. That was very rare.

Cross-examination.

By MR. GILFILLAN:

Q. Do you mean to say that you paid the freight on account and for the convenience of the consignee?

A. Possibly there was no freight station.

Q. As a matter of fact, were you not primarily responsible to the railroad for the freight, whether it was sold f. o. b. the mines or sold at a delivered price?

A. Was I responsible?

Q. The Glen White Coal & Lumber Company.

A. Responsible to the railroad company for the freight?

Q. Yes.

A. I do not know about that.

Q. Supposing a consignee would not take the coal, although it was sold at a delivered price, or though it was sold f. o. b. the mines; would not the railroad make the Glen White Company pay the freight?

A. If the consignee refused to pay it?

Q. Yes. You had cases like that, did you not?

A. I suppose so. I do not know.

Q. Do you not know that the Glen White Coal & Lumber Company paid the freight if the consignee did

not pay it, whether it was sold f. o. b. the mines or sold at a delivered price?

A. I know this—

Q. Answer this question first.

(Question read.)

A. If it was sold f. o. b. the mines and the freight was not paid, I suppose the railroad company would call on us for it and we would have to pay it. If the railroad company called on us, we would have to pay it.

Q. You had cases where the railroad did that?

A. I said a few moments ago there were some isolated cases where there was no freight station where we prepaid the freight for the convenience of the consignee.

Q. I am not talking about that. Had you cases where the consignee did not pay the freight, where the coal would have to be moved?

A. I do not recall that.

Q. You do know that the Glen White Coal & Lumber Company was finally responsible to the railroad company for the payment of freight on coal carried from the Glen White mines, no matter where it went; is not that so?

A. I do not know.

Q. You actually mean you do not know?

A. I do not. I am not prepared to answer that question, whether we did or not. If I am shipping coal to you and I am not prepaying the freight on that coal, if I sold that coal f. o. b. the mines, I presume that you will pay the freight.

Q. Suppose I do not pay it?

A. Suppose you do not pay it, or decline to pay it?

Q. Yes.

A. I would have to look for another consignee.

Q. Supposing no consignee paid it. Would the railroad call on the consignee, or look to the shipper?

A. I suppose in that instance, I would have to

make the best disposition I could for the coal, or get somebody else to do it, one or the other.

Q. You paid the freight on coal shipped to Sewaren, New Jersey, and to Maurer, New Jersey, did you not?

A. I do not know.

Q. Do you really know anything about what you are testifying about, except as a general custom of the Glen White Coal & Lumber Company?

A. The custom of the Glen White Coal & Lumber Company was to sell coal and coke f. o. b. the mines.

Q. There were some cases where you did not so sell it?

A. Isolated cases, as I stated just now, where there was no station.

Q. Is there not an agent at Sewaren, New Jersey, and at Maurer, New Jersey?

A. I do not know.

Q. Do you know whether the Glen White Coal & Lumber Company—

A. Ever shipped to those points?

Q. Yes.

A. I do not know that.

Q. You do not?

A. No, sir.

Q. Would you say that they did not pay freight on coal shipped to those points?

A. I do not think they did.

Q. Coke?

A. I do not think they did.

Q. You do not think they did?

A. I do not think they did.

Q. Will you say that the coal was not sold at a delivered price where the coal was shipped by the Glen White Coal & Lumber Company to Sewaren, New Jersey, and Maurer, New Jersey?

A. I am not familiar with those points, I do not recall them. We may have shipped there. That is a

good while ago, back there, and I do not propose to go back that far and remember just what occurred. I cannot do it. But, I say, the general custom of our company was to sell the coal at that price, I mean f. o. b. the mines.

Q. You were familiar with the lateral allowance, were you?

A. Yes, sir.

Q. You got that lateral allowance no matter where the coal was shipped, and no matter who paid the freight?

A. Yes, sir.

Re-direct-examination.

By MR. GOWEN:

Q. In testifying as to the sales made f. o. b. the mines, you include both coal and coke, do you not?

A. Yes, sir; I intended to state that.

By MR. GILFILLAN:

Q. You cannot give these isolated cases where the freight was prepaid on the coal sold at a delivered price?

A. I cannot do it, no. For instance—

Q. That is all I wanted to know, if you cannot give it.

A. Let me be perfectly clear in the matter. There may be cases, for instance a fellow will come along where we will have an order for maybe five or six carloads of coal, whatever it may be, coal or coke, and we would suppose possibly that the freight would be paid at the other end of the line, and the railroad company would make a draft on us for the freight. That happened just a few days ago. We paid the freight and charged the consignee with it and collected it, and so in some isolated cases like that. But we have always sold it f. o. b. the mines.

Q. That is, you generally have sold it that way?

A. Except in those cases, except isolated cases here and there. I do not remember how many there were, but there could not have been many. Those points you mentioned, I am not familiar with shipments to those points; there may have been. I could not go back, you know, and tell you where we shipped in that time.

Q. You have nothing but general information on the subject?

A. Yes; general information. I would have to get the data elsewhere, look it up.

By MR. GOWEN:

Q. This is the fact, that during the period we have been speaking of, it was the invariable practice of the Glen White Coal & Lumber Company to sell both coal and coke f. o. b. the mines and ovens, except in cases where there was no agent at the point to which the coal or coke was to be shipped, the freights were prepaid by you for the account of the consignee?

A. Account of the consignee, yes, sir.

By MR. GILFILLAN:

Q. Was that the only instance, where there were no agents?

A. As far as I can remember.

By MR. GOWEN:

Q. You were never required by the railroad company to stipulate or to agree that you would pay the freight on coal or coke on which the consignee failed to pay the freight, were you?

A. Not to the best of my recollection.

By MR. GILFILLAN:

Q. Did you not give a bond for it?

A. No, sir; we never bonded.

Q. You know you demand a bond from anybody else?

A. They never asked any bond. We never did any tidewater business to any extent.

Q. You know it was the custom of the railroad to make the shipper give a bond for the payment of the freight?

A. I know it was done where they have tidewater shipments, but we have never done any tidewater shipping.

Q. Was it confined to f. o. b. shipments?

A. We were never asked to give a bond.

Q. Your company was not?

A. No.

Q. You know it was the practice then and is the practice now?

A. I know it is the practice now.

Q. Did you not know it was the practice then?

A. No, I did not.

Q. How long have you been in the coal shipping business along the Pennsylvania lines at that time?

A. For at least twenty years.

Q. And you never knew they required the shipper to give a bond that the freight would be paid?

A. No, I did not.

Q. You said you sold f. o. b. the mines during the period between April, 1897, and May, 1901. During the time that there were the rebates or the allowances on the freight on coke, did you not sell at a delivered price at that time, except on the sales of the Maryland Steel Company and the Pennsylvania Steel Company?

A. I do not know that I did.

Q. Would you say you did not?

A. I do not think that we did, at a delivered price. We did not pay the freight, I know that.

Q. Do you not know that the Glen White Coal & Lumber Company, the company that you are secretary of, sold coke at a delivered price between 1897 and 1901?

A. I would have to go back and look that matter up.

Q. You do not know one way or the other now, do you?

A. I am not sure about that, to the Maryland Steel Company.

Q. I am excluding the Maryland Steel Company and the Pennsylvania Steel Company.

A. I do not think that we did. We never paid any freight and I do not think we sold at a delivered price.

Q. Could you find that out? Will you look at your books?

A. All our old records were burnt up in the Baltimore fire and I do not know that I can throw any light on the question.

Q. You can easily find out; you know whom you sold to during those periods, some of your big customers, do you not?

A. I suppose I could see, look it up and see what I could do.

Q. The Glen White Coal & Lumber Company made their claim for the difference from the published to the net tariff rate outside of your lateral, between April, 1897, and May, 1901?

A. I do not know whether I can tell off-handed.

Q. Do you not know that the Glen White Coal & Lumber Co. demanded and received outside of the lateral allowance, the difference between the published and the net tariff rates, and that they were given the checks by the Pennsylvania Railroad Company?

A. In that period?

Q. Yes, during the period when those allowances were made from the published to the net rate.

A. Before answering that question, I would sooner familiarize myself more with the details and see.

Q. Do you mean to say that you do not know of that familiar practice during that period? Did not your company get it nearly every month?

A. There may have been allowances made back there for coke shipments, but I do not recall now just exactly what they were.

Q. Why did you get these allowances that came from the freight rate, if you had nothing to do with the freight rate?

A. I suppose they were allowed to others and they were given to us, too.

Q. I know, but both could not get it from one freight rate. If you had nothing to do with the freight rate, why did the Pennsylvania Railroad allow that?

THE REFEREE: He has not said that, he simply said they were sold f. o. b. the mine.

By MR. GILFILLAN:

Q. You do know that the Glen White Coal & Lumber Company did get the allowance from the published to the net tariff rate during the period that was in vogue between April, 1897, and May, 1901, do you not?

A. You mean the difference between the published and the net tariff?

Q. Yes.

A. You mean in addition—

Q. To your lateral?

A. In addition to our lateral?

Q. Yes. Do you not know that?

A. I am not altogether clear about it. I presume we got some. I do not know just what we got now, I could not tell you.

By THE REFEREE:

Q. He is not asking the amount, he asks simply for the facts.

A. I presume that we did.

WILLIAM W. STRONG, having been duly sworn, was examined as follows:

By MR. GOWEN:

Q. Where do you reside?

A. In Delaware County.

Q. What position do you hold with the Pennsylvania Railroad Company?

A. Chief clerk in the coal freight department.

Q. You have occupied that position how long?

A. Since it was first organized. My recollection is that it was in 1888.

Q. You have held continuously that position since that date?

A. Yes, sir.

Q. You are familiar, are you not, with the tariffs which the railroad company has issued from time to time covering rates to various points to which the coal and coke were shipped over its lines?

A. Yes, sir.

Q. Please state what routes for the shipment of coal and coke from the Clearfield region were opened to the following points: Philadelphia?

A. Pennsylvania Railroad direct, and via Harrisburg & Philadelphia & Reading Railroad.

Q. You mean via Pennsylvania Railroad and Pennsylvania Railroad to Harrisburg?

A. Yes, sir.

Q. Hazleton?

A. Via Pennsylvania Railroad and via Mount Carmel & Lehigh Valley Railroad.

Q. Two routes?

A. Yes, sir.

Q. Pennsylvania Railroad all through?

A. Pennsylvania Railroad up to Tomhickon and Lehigh Valley from Tomhickon to Hazleton.

Q. Were there two routes to Hazleton?

A. Yes, sir; one is by way of Tomhickon by way of the Pennsylvania Railroad, and then over the Lehigh Valley track under a sort of trackage arrangement, I believe, to destination. The other is by way of Mount Carmel and the Lehigh Valley Railroad.

Q. Reading?

A. Reading, by way of the Pennsylvania Railroad

direct and also by way of Harrisburg and the Philadelphia & Reading Railroad.

Q. Royersford?

A. Two routes, one via Pennsylvania Railroad direct and the other via Harrisburg and Philadelphia & Reading.

Q. Conshohocken?

A. Pennsylvania Railroad direct and also via Harrisburg and the Philadelphia & Reading Railroad.

Q. Germantown?

A. Via Pennsylvania Railroad direct and also via Harrisburg and the Philadelphia & Reading Railroad.

Q. Norristown?

A. Same way; Pennsylvania Railroad direct and via Harrisburg and Philadelphia & Reading Railroad.

Q. Catasauqua?

A. Catasauqua is reached via Mount Carmel and Lehigh Valley Railroad, and also via Nanticoke and the Central Railroad of New Jersey.

Q. Allentown?

A. Allentown was reached via Harrisburg and the Philadelphia & Reading Railroad, also via Nanticoke and the Central Railroad of New Jersey, also via Mount Carmel and Lehigh Valley Railroad.

Q. Swedeland?

A. Swedeland, reached via Pennsylvania Railroad direct, also via Harrisburg and Philadelphia & Reading Railroad.

Q. Wilkes-Barre?

A. Reached via Pennsylvania Railroad, also via Nanticoke and Central Railroad of New Jersey, and Mount Carmel and Lehigh Valley Railroad.

Q. Pottstown?

A. Via Pennsylvania Railroad and also via Harrisburg and Philadelphia & Reading Railway.

Q. Lebanon?

A. Lebanon was reached via Pennsylvania Railroad and Conewago, then via Cornwall and Lebanon

Railroad to destination, and also via Harrisburg and the Philadelphia & Reading Railway.

Q. Cornwall?

A. Cornwall is reached by Harrisburg and the Philadelphia & Reading Railroad, also via the Conewago & Cornwall Railroad, Conewago and Lebanon and Conewago & Cornwall Railroad.

Q. Carbondale; is that only one route?

A. One route; yes, sir.

Q. Easton?

A. Easton is reached via Nanticoke and the Central Railroad of New Jersey, also via Mount Carmel and Lehigh Valley Railroad.

Q. Bethlehem?

A. Bethlehem is reached via Nanticoke and Central Railroad of New Jersey and also via Mount Carmel and the Lehigh Valley Railroad.

Q. Pencoyd?

A. Pencoyd is reached via Pennsylvania Railroad also via Harrisburg and the Philadelphia & Reading Railway?

Q. Parryville?

A. Parryville is reached via Nanticoke and the Central Railroad of New Jersey, also via Mount Carmel and Lehigh Valley Railroad.

Q. South Bethlehem?

A. South Bethlehem is reached via Mount Carmel and Lehigh Valley Railroad, also via Harrisburg and Philadelphia & Reading Railway.

Q. Jersey City?

A. Jersey City is reached via Pennsylvania Railroad direct, also via Nanticoke and Central Railroad of New Jersey and also via Mount Carmel and Lehigh Valley Railroad; also via Marion, New Jersey, and the Erie Railroad.

Q. Worcester, Mass.?

A. Worcester, Mass., reached via Jersey City and New York, New Haven & Hartford Railroad; also via

Himrods, New York, and the New York Central & Hudson River Railroad, West Albany Transfer, Boston & Albany Railroad.

Q. Boston, Mass.?

A. Boston, Mass., reached via Pennsylvania to Jersey City, New Jersey, thence via floats and New York, New Haven & Hartford Railroad. Also via Pennsylvania Railroad to Himrods, New York, and from Himrods to destination via New York Central & Hudson River Railroad, West Albany Transfer, and the Boston & Albany Railroad.

Q. Marlboro, Mass.?

A. Via Pennsylvania Railroad to Jersey City, thence by floats and New York, New Haven & Hartford Railroad. Also via Pennsylvania Railroad to Elmira, New York, thence via either the Erie Railroad or Delaware, Lackawanna & Western to Binghampton, then via the Delaware & Hudson Company to Mechanicsville, New York. I presume—I will not be sure about this—but I think it is via Boston & Main from Mechanicsville to Marlboro.

Q. South Framingham, Mass.?

A. Via Pennsylvania Railroad to Jersey City, thence by floats and New York, New Haven & Hartford Railroad. Also via Pennsylvania Railroad to Himrods, New York, and New York Central & Hudson River Railroad, West Albany Transfer, and Boston & Albany Railroad.

Q. Trenton, New Jersey?

A. Via Pennsylvania Railroad direct, also via Pennsylvania Railroad to Harrisburg and Philadelphia & Reading Railroad Harrisburg to destination.

Q. Newark, New Jersey?

A. Via Pennsylvania Railroad direct, also via Pennsylvania Railroad to Mount Carmel and Lehigh Valley Railroad to destination. Also via Pennsylvania Railroad to Nanticoke and Central Railroad of New Jersey from Nanticoke to destination.

Q. Albany, New York?

A. Via Pennsylvania Railroad to Himrods, New York, and New York Central & Hudson River Railroad, also via Pennsylvania Railroad to Elmira, New York, and the Delaware, Lackawanna & Western, or Erie Railroad, from Elmira to Binghampton and the Delaware & Hudson from Binghampton to destination.

Q. Pittsfield, Mass.?

A. Via Pennsylvania Railroad to Jersey City, thence via floats and the New York, New Haven & Hartford to destination. Also via Pennsylvania Railroad to Himrods, New York, and New York Central, Hudson River and West Albany Transfer, and Boston & Albany Railroad.

Q. Fitchburg, Mass.?

A. Pennsylvania Railroad to Jersey City, thence via floats and the New York, New Haven & Hartford Railroad. Also via Pennsylvania Railroad to Elmira, New York, thence via the Erie Railroad or Delaware, Lackawanna & Western Railroad to Binghampton, thence via Delaware & Hudson from Binghampton to Mechanicsville and Boston & Maine Railroad to destination.

Q. Orange, New Jersey?

A. Via Pennsylvania Railroad to Harrison, New Jersey, and Delaware, Lackawanna & Western Railroad. Also via Pennsylvania Railroad, Marion, New Jersey and Erie Railroad.

Q. Bayonne, New Jersey?

R. Via Pennsylvania Railroad and the National Docks Railroad. Also via Pennsylvania Railroad to Nanticoke and the Central Railroad of New Jersey. Also via Pennsylvania Railroad to Mount Carmel and the Lehigh Valley Railroad.

Q. Troy, New York?

A. Via Pennsylvania Railroad to Elmira, New York, thence via the Erie Railroad or the Delaware, Lackawanna & Western to Binghampton, thence via

Delaware & Hudson Company from Binghampton to Troy. Also via Pennsylvania Railroad to Himrods, New York, thence via New York Central & Hudson River Railroad to destination.

Q. Passaic, New Jersey?

A. Via Pennsylvania Railroad to Harrison, New Jersey, thence via the Delaware, Lackawanna & Western Railroad. Also via Pennsylvania Railroad to Marion, New Jersey, and the Erie Railroad to destination. Also via Pennsylvania Railroad to Marion, New Jersey, and the New York, Susquehanna & Western Railroad to destination.

Q. Lowell, Mass.?

A. Via Pennsylvania Railroad to Jersey City, thence via floats and the New York, New Haven & Hartford Railroad to destination. Also via Pennsylvania Railroad to Elmira, New York, thence via the Erie Railroad or Delaware, Lackawanna & Western Railroad to Binghampton, thence via Delaware & Hudson Railroad, Binghampton to Mechanicsville, New York, and the Boston & Maine Railroad?

Q. Utica, New York?

A. Via Pennsylvania Railroad to Himrods, New York, then via New York Central & Hudson River Railroad. Also via Pennsylvania Railroad to Newark, New York, and the West Shore Railroad, also via Pennsylvania Railroad to Elmira, New York, and the Delaware, Lackawanna & Western Railroad.

Q. Syracuse, New York?

A. The same as Utica.

Q. Milford, Mass.?

A. Via Pennsylvania Railroad to Jersey City, thence via floats and the New York, New Haven & Hartford Railroad. Also via Pennsylvania Railroad to Himrods, New York, and New York Central & Hudson River Railroad, West Albany Transfer & Boston & Albany Railroad.

Q. Maurer, New Jersey?

A. Via Pennsylvania Railroad to Nanticoke and the Central Railroad of New Jersey. Also via Pennsylvania Railroad to Mount Carmel and the Lehigh Valley Railroad.

Q. New Durham, New Jersey?

A. Via Pennsylvania Railroad to Marion, New Jersey, and the Erie Railroad. Also via Jersey City; New Jersey, and the West Shore Railroad. Also via Marion, New Jersey, and the New York, Susquehanna & Western Railroad.

Q. Elizabeth, New Jersey?

A. Via Pennsylvania Railroad direct, also Pennsylvania Railroad to Nanticoke, Pennsylvania, and the Central Railroad of New Jersey. Also Pennsylvania Railroad to Mount Carmel, Pennsylvania, and the Lehigh Valley Railroad.

Q. Constable Hook, New Jersey?

A. Via Pennsylvania Railroad and the National Docks Railroad. Also via Pennsylvania Railroad to Nanticoke, Penna., and the Central Railroad of New Jersey. Also via Pennsylvania Railroad to Mount Carmel, Pennsylvania, and the Lehigh Valley Railroad.

Q. Perth Amboy, New Jersey?

A. Via Pennsylvania Railroad direct. Also via Pennsylvania Railroad to Nanticoke, Pennsylvania, and the Central Railroad of New Jersey. Also via Pennsylvania Railroad to Mount Carmel, Pennsylvania, and the Lehigh Valley Railroad.

Q. Flemington, New Jersey?

A. Via Pennsylvania Railroad direct. Also via Pennsylvania Railroad to Nanticoke and the Central Railroad of New Jersey. Also via Pennsylvania Railroad to Mount Carmel and the Lehigh Valley Railroad.

Q. I understand that the routes which you have mentioned to the various points just named were available for the shipment of coal and coke from the Clearfield regions to the points named under tariffs in existence between March 1st, 1899, and May 1st, 1901?

A. I think there was one exception there.

Q. What is that?

A. That is in the case of Boston. I do not think we had any rate via the New York, New Haven & Hartford Railroad on bituminous coal at that time. We might have had on coke. I also wish to say in connection with those routes via Mechanicsville and the Boston & Maine Railroad, we had no rate on coal by that route.

Q. No rates on coal via that route?

A. No.

Q. No through rates, you mean?

A. Yes.

Q. Were there local rates under which the shipment could be made?

A. So far as I know, the connecting lines had published rates covering those shipments.

Q. But you do not know whether the rates were as low as the through rate?

A. I do not know in every case. I do not know except that my impression is—

Objected to.

Q. If you do not know, do not tell us.

A. I know in one case the rate was the same, because I happened to look at the tariff this morning and verified it.

Q. With the exception of those rates which you have referred to, the other routes you have named were available for shipments from the Clearfield region to the points named between March 1st, 1899, and May 1st, 1901?

A. I believe so.

Q. I understand that the examination of the tariffs made did not go back before March 1st, 1899?

A. They went back as far as 1897.

Q. Then these routes which you have named were available from April, 1897, to May, 1901?

A. Yes, sir; that is my recollection—I guess maybe I am mistaken about that.

Q. Will you look at that when you get back to the office, and if your statement should be corrected, please correct it.

A. I see they are dated March 1st, 1897, to May 1st, 1901, but in a general way I think it is safe to say the routes were the same prior to that.

(Adjourned until Tuesday, January 7th, 1908.
at 3:30 p. m.)

Meeting Tuesday, January 13th, 1908, 3:30 p. m.
Present:

HON. THEODORE F. JENKINS, Referee.

MESSRS. GILFILLAN and GOWEN.

CHARLES A. BUCH, recalled.

By MR. GOWEN:

Q. Have you prepared a statement from the books of the Columbia Coal Mining Company showing the purchases of coke made by that company from the Latrobe Coal Company?

A. I have, from April 1st. This statement is as follows:

DATE	TONS	AMOUNT PAID
1898—April	3789	\$4244.44
May	273	338.95
June	172	244.42
July	65	107.51
August	37	62.45
September	376	466.70
October	672	836.84
November	840	1032.43
December	860	1051.05

DATE	TONS	AMOUNT PAID
1899—January	625	772.88
February	93	1203.02
March	1577	1922.73
April	1634	2005.31
May	1948	2372.33
June	2257	2854.09
July	2342	3552.72
August	3457	5508.20
September	2705	4365.29
October	3986	7118.43
November	3625	6415.72
December	3387	5879.90
1900—January	6507	14636.94
February	5234	12112.00
March	6663	15406.36
April	6271	14208.12
May	4717	10620.81
June	5394	10409.31
July	4898	8259.28
August	4701	7229.34
September	4171	5758.14
October	6893	9421.23
November	4934	6841.20
December	4752	6310.87
1901—January	4325	6354.22
February	5077	7717.76
March	6679	10179.39
April	6230	9557.43

It is admitted that the coal and coke purchased by the Columbia Coal Mining Company from the Latrobe Coal Company as above, were purchased f. o. b. the mines and ovens, respectively.

FRANK TENNEY, having been duly sworn, was examined as follows:

By MR. GOWEN:

Q. You are connected with the Pennsylvania Steel Company?

A. Yes, sir.

Q. What office?

A. Assistant to the president and secretary.

Q. In what capacity?

A. I was assistant to the president prior to the organization of the new company. That was in April, 1901; and after that I also assumed the duties of secretary.

Q. During the years 1900 and 1901 what had you to do, if anything, with the purchases of coal made by the Pennsylvania Steel Company?

A. I purchased all the coal.

Q. During those years did the Pennsylvania Steel Company purchase any coal shipped from the Millwood mine?

A. Yes, I believe that we did. I looked it up.

Q. Were those purchases made at a price delivered at the works of the Steel Company, or f. o. b. the mines?

A. F. o. b. the mines.

Cross-examination.

By MR. GILFILLAN:

Q. Did you get any lateral allowance, or did the Millwood Company get the lateral allowance from the Pennsylvania Railroad?

A. What do you mean? I do not understand it.

Q. Did you get any lateral allowance per ton on the coke or coal that you purchased from the Millwood?

A. What is the lateral allowance? What does that mean?

Q. It is in evidence here that the Millwood Coal & Coke Company got 15 cents a ton on what was known as a lateral allowance. I want to know whether you or your company got 15 cents a ton, or got that lateral allowance on the coal and coke that you purchased from them f. o. b. the mines.

A. I cannot say. If this is what you mean, when we purchased that coal, we purchased it from a man named Murdock, who was with Alfred Tucker & Company. The freight that was charged us on that coal was 15 cents a ton higher than the regular rates of the Clearfield regions and that 15 cents a ton we got back from the miners of the coal.

Q. From the miners of the coal?

A. Yes.

Q. And you purchased from Murdock, who was with Tucker?

A. Yes, Murdock who was with Tucker.

Q. And your contract was with them?

A. Our contract was with them.

Q. And you paid them?

A. We paid them.

Q. And that rebate was all that you got back, and you got that back from the Millwood Coal Company?

A. No; we got that from Alfred Tucker & Company.

Q. That was a rebate on the freight rate, was it not, a return of part of the freight rate?

A. The freight charged us, as I remember, was 15 cents a ton from these mines higher than from other mines that we were getting coal from in that region. Why it was, I do not know.

By THE REFEREE:

Q. You do not know of that fact, either?

A. No, I do not know that is the fact; I know we got this 15 cents a ton back.

By MR. GILFILLAN:

Q. Did you ever get any letter from Alfred Tucker

or from the Pennsylvania Railroad stating that this was a lateral allowance, or was just simply a return of what you supposed was the excess 15 cents.

A. I could not say.

Q. You really do not know much about that part, do you?

A. No. I know that when we bought the coal, we knew what the freight was supposed to be and if we paid a higher freight, then we took it off the coal.

Q. You got it back? You deducted it, you mean, when you were sending the check to Tucker?

A. No. If they billed the coal at a certain price and they charged us a higher rate than we knew was operative from other mines in that region, and we bought it before on that freight rate and then paid a higher one, we deducted it from the payments to Alfred Tucker & Company.

Q. Where is Tucker's place of business?

A. In the Harrison Building.

Q. Who is the man that you dealt with?

A. A man by the name of Murdock.

By MR. GOWEN:

Q. Without knowing on what account that deduction was made, you know in point of fact that the Pennsylvania Steel Company got the benefit of a reduction of the rate on that coal?

A. Yes.

JAMES L. MITCHELL, recalled.

By MR. GOWEN:

Q. In the statement of shipments made by your company to South Amboy and to Greenwich, are included, are there not, a number of shipments which were turned over by you after the arrival of the coal at Greenwich and South Amboy to other companies, upon terms which obligated them for the price of the coal at the mines, they paying the freight on that coal? ..

A. Yes, sir; in some cases. At that period the coal was weighed at South Amboy or Greenwich and the freight paid when the vessel was loaded, and we would very often be short coal and we would have to borrow from other people, and in some cases we sold and then they would pay us back that amount of coal. There was usually a bill passed between us.

Q. Take for instance coal which you shipped to Greenwich and turned over under the circumstances referred to, to the Sterling Coal Company. Did you enter into any obligation at that time to take a similar amount of coal from the Sterling Coal Company?

A. In some cases when I would get it from the Sterling Coal Company I would agree to pay them back; whenever they needed the coal, they could call on us for it.

Q. In some cases?

A. Yes; and in some cases we sold the coal outright. That statement there will show the whole thing on it. It shows all the coal we turned over and all we borrowed.

Q. And all you got from other parties?

A. All we got from other parties, so the difference in that would have to be checked off as f. o. b. mines coal.

Q. In point of fact, this statement shows that you turned over considerably more coal than you took from others?

A. Yes, sir; very often we would sell some coal outright that we had there.

The statement referred to by Mr. Mitchell is as follows:

Statement of shipments of coal transferred by Mitchell Coal & Coke Company at Greenwich, Pa., to various coal and coke companies at f. o. b. price, between August 1st, 1898, and June 30th, 1900.

Colliery	Date	To whom transferred	Cwt.
1898			
Columbia #4	Sept. 24	Sterling Coal Co.	410
"	" 26	" " "	631
"	" "	" " "	512
"	" "	" " "	530
"	" "	" " "	611
"	" 27	" " "	522
"	" 28	" " "	535
"	" "	" " "	636
"	" "	" " "	648
"	Oct. 29	" " "	665
"	" 31	" " "	607
"	" "	" " "	665
"	" "	" " "	665
Hastings	" "	" " "	517
"	" "	" " "	498
Columbia #4	Nov. 1	" " "	553
"	" "	" " "	670
"	" 24	" " "	445
"	" 26	Columbia Coal Mining Co.	418
1899			
Hastings	March 1	" " "	630
"	" 2	Ber'd-White Coal Mg. Co.	430
Columbia #4	April 19	" " "	651
"	" "	" " "	537
"	" "	Sterling Coal Co.	654
"	" "	" " "	514
" #6	" "	" " "	614
"	" "	Ber'd-White Coal Mg. Co.	601
"	" "	" " "	405
" #4	" 20	" " "	656
"	" "	" " "	530
"	" "	" " "	434
"	" "	" " "	538
" #6	" "	" " "	627
"	" "	" " "	395

Colliery	Date	To whom transferred	Cwt.
Columbia #4	April 22	Sterling Coal Co.	422
"	" "	" " "	393
Gallitzin	" 19	" " "	732
"	" "	" " "	562
"	" "	" " "	560
"	" "	" " "	611
"	" "	" " "	680
"	" "	" " "	346
"	" "	" " "	415
"	" "	" " "	433
"	" "	" " "	649
"	" "	" " "	537
"	" "	" " "	493
"	" "	" " "	327
"	" 21	" " "	455
"	" "	" " "	678
"	" "	" " "	475
"	" "	" " "	568
"	" "	" " "	566
Columbia #6	" 27	" " "	618
" #4	" 26	" " "	437
"	May 20	Puritan Coal Mining Co.	499
"	" "	" " "	646
"	" 23	" " "	642
Columbia #4	June 12	Sterling Coal Company	979
"	" "	" " "	893
" #6	" 13	" " "	528
"	" "	" " "	651
"	" 15	" " "	517
"	July 27	" " "	614
"	" 28	" " "	622
" #4	Aug. 17	" " "	669
" #6	Sept. 9	" " "	613
1900			
" #4	Feb. 6	" " "	649

Colliery	Date	To whom transferred				Cwt.
Gallitzin	June 28	Berw'd-White Coal Mg.Co.				608
"	"	"	"	"	"	613
"	"	"	"	"	"	542
"	"	"	"	"	"	801
"	"	"	"	"	"	790
"	"	"	"	"	"	600
"	"	"	"	"	"	596
Hastings	"	Sterling Coal Company				527
Gallitzin	" 29	Berw'd-White Coal Mg.Co.				473
"	"	"	"	"	"	606
"	"	"	"	"	"	598
"	"	"	"	"	"	475
Hastings	"	Sterling Coal Co.				817
Gallitzin	" 30	"	"	"	"	615
"	"	Berw'd-White Coal Mg.Co.				489
"	"	"	"	"	"	614
Hastings	"	Sterling Coal Co.				532
"	"	"	"	"	"	522
Columbia #6	"	Berw'd-White Coal Mg.Co.				461
"	"	"	"	"	"	473
"	"	"	"	"	"	408

Statement of shipments of coal transferred by various coal companies to Mitchell Coal & Coke Company, between August 1st, 1898, and June 30th, 1900, inclusive.

Date	Transferred by				Cwt.
Sept. 21, 1898	Columbia Coal Mining Co.				604
" " "	"	"	"	"	534
" " "	"	"	"	"	409
" " "	"	"	"	"	513
" " "	"	"	"	"	591
" " "	"	"	"	"	468
" 27 "	Puritan Coal Mining Co.				642
" " "	"	"	"	"	613
" " "	"	"	"	"	502

Date			Transferred by				Cwt.
"	"	"	"	"	"	"	411
"	"	"	"	"	"	"	592
Oct.	31	"	Loyal-Hanna Coal Co.				632
"	"	"	"	"	"	"	625
							609
Apr. ¹	5, 1899		Sterling Coal Co.				416
"	"	"	"	"	"	"	437
"	"	"	"	"	"	"	423
"	"	"	"	"	"	"	399
"	"	"	"	"	"	"	627
"	"	"	"	"	"	"	400
"	"	"	"	"	"	"	642
"	"	"	"	"	"	"	553
"	"	"	"	"	"	"	396
"	"	"	"	"	"	"	405
"	"	"	"	"	"	"	822
"	"	"	"	"	"	"	775
"	"	"	"	"	"	"	788
"	"	"	"	"	"	"	775
"	"	"	Columbia Coal Mining Co.				494
"	"	"	"	"	"	"	624
"	"	"	"	"	"	"	516
"	"	"	"	"	"	"	534
May	12	"	"	"	"	"	1021
"	"	"	"	"	"	"	1051
"	"	"	"	"	"	"	999
"	"	"	"	"	"	"	1038
"	"	"	"	"	"	"	1037
"	"	"	"	"	"	"	1028
"	"	"	"	"	"	"	1040
"	"	"	"	"	"	"	1050
"	"	"	"	"	"	"	1042
"	"	"	"	"	"	"	1035
"	"	"	"	"	"	"	996
"	"	"	"	"	"	"	1031
"	"	"	"	"	"	"	1039

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Date	Transferred by	Cwt.
" " "	" " " "	1036
July 25 "	" " " "	418
" " "	" " " "	505
" " "	" " " "	514
" " "	" " " "	625
Sept. 29 "	Berwind-White Coal Mining Co.	523
		609
		628
		624
		402

Statement of shipments of coal transferred by Mitchell Coal & Coke Company at South Amboy to various coal and coke companies at f. o. b. price, between August 1st, 1898, and June 30th, 1900, inclusive.

Colliery	Date	To whom transferred	Cwt.
	1898		
Hastings	Aug. 18	Columbia Coal Mining Co.	424
"	" "	" " " "	506
"	" 19	" " " "	434
"	" "	" " " "	610
"	" 23	" " " "	638
"	" 24	Puritan Coal Mining Co.	480
"	" 25	" " " "	500
"	" 29	" " " "	415
Columbia #4	Sept. 2	" " " "	427
"	" 9	Columbia Coal Mining Co.	424
"	" "	" " " "	387
"	" 16	" " " "	654
"	" 17	Puritan Coal Company	397
Hastings	" 19	" " " "	507
"	" 17	Sterling Coal Company	502
Col #4	" 19	Puritan Coal Company	522
Hastings	" 20	Sterling Coal Co.	410
Col #4	Oct. 19	Allport Coal Co.	740
"	" 20	" " " "	665
"	Dec. 9	Columbia Coal Mining Co.	453

Colliery	Date	To whom transferred	Cwt.
	1899		
Col #6	Jan. 23	Delta Coal Mining Co.	410
"	" 24	" " " "	514
Hastings	" 30	Sterling Coal Mining Co.	516
"	" "	" " " "	630
"	" "	" " " "	630
Gallitzin	" "	" " " "	491
"	" "	" " " "	485
"	" "	" " " "	581
"	" "	" " " "	484
"	" "	" " " "	597
"	" "	" " " "	590
"	" "	" " " "	487
"	" "	" " " "	479
"	" "	" " " "	412
Hastings	" 31	" " " "	633
"	" "	" " " "	524
"	" "	" " " "	627
Gallitzin	Feb. 1	" " " "	500
"	" "	" " " "	487
"	" "	" " " "	596
"	" "	" " " "	613
"	" "	" " " "	505
"	" "	" " " "	490
Hastings	" "	Sterling Coal Co.	410
"	" "	" " " "	436
"	" "	" " " "	630
Gallitzin	Feb. 6	" " " "	480
"	" "	" " " "	608
"	" "	" " " "	590
"	Mar. 3	" " " "	599
"	" "	" " " "	580
"	" "	" " " "	592
"	" "	" " " "	476
"	" 4	" " " "	600
"	" "	" " " "	583
"	" "	" " " "	604

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Colliery	Date	To whom transferred	Cwt.
"	"	"	590
"	"	"	590
"	"	"	592
"	"	"	585
"	"	"	595
"	"	"	590
"	"	"	598
"	"	"	581
Hastings	"	"	649
"	"	"	518
"	"	"	649
"	"	"	420
"	" 6	"	643
"	"	"	634
"	"	"	626
"	" 4	"	626
"	"	"	629
"	"	"	619
"	" 11	"	692
"	"	"	500
"	"	"	627
"	"	"	510
Columbia #6	" 13	"	508
" #4	" 20	"	647
Gallitzin	" 28	"	574
"	"	"	582
"	" 29	"	598
"	"	"	603
"	"	"	586
"	"	"	577
"	"	"	584
"	"	"	588
"	"	"	582
"	"	"	577
"	"	"	571
"	"	"	527
"	" 30	"	574

Colliery	Date	To whom transferred	Cwt.
"	"	"	572
"	"	"	576
"	"	"	584
"	31	"	578
"	"	"	580
"	"	"	562
"	"	"	570
"	"	"	580
"	"	"	555
"	Apr. 1	"	588
"	"	"	583
"	"	"	602
"	"	"	598
"	"	"	587
"	4	"	584
"	"	"	595
"	"	"	610
"	"	"	590
"	"	"	590
"	8	"	589
"	"	"	575
"	"	"	601
"	12	"	566
"	"	"	575
"	"	"	590
"	"	"	570
"	"	"	574
"	"	"	590
"	"	"	572
"	"	"	568
"	"	"	558
"	13	"	578
"	"	"	554
"	"	"	568
"	"	"	560
"	"	"	574
"	"	"	565

Colliery	Date	To whom transferred				Cwt.
"	" 18	"	"	"		575
"	" "	"	"	"		556
"	" "	"	"	"		568
"	" "	"	"	"		588
"	" "	"	"	"		579
"	" "	"	"	"		581
"	" 22	"	"	"		557
"	" "	"	"	"		562
"	" "	"	"	"		567
"	" "	"	"	"		568
"	" "	"	"	"		560
"	" 28	"	"	"		566
Gallitzin	May 15	"	"	"		449
"	" 16	"	"	"		397
Columbia #6	June 8	"	"	"		524
"	" "	"	"	"		520
"	" "	"	"	"		640
"	" "	"	"	"		516
" #4	Aug. 19	"	"	"		546
"	" "	"	"	"		545
"	" 23	"	"	"		667
"	" 25	"	"	"		655
"	" 26	"	"	"		561
"	" 28	"	"	"		653
"	Sept. 1	"	"	"		667
1900						
" #6	Jan. 2	Columbia Coal Mining Co.				590
"	" "	"	"	"	"	455
"	" 3	"	"	"	"	390
"	" "	"	"	"	"	710
"	" "	"	"	"	"	448
"	" 10	"	"	"	"	637
"	" "	"	"	"	"	473
"	" 16	"	"	"	"	647
"	" "	"	"	"	"	564
"	" 30	"	"	"	"	568

Colliery	Date	To whom transferred	Cwt.
"	" "	" " " "	673
" #4	Feb. '13	" " " "	420
"	Mar. 30	Puritan Coal Mining Co.	647
Gallitzin	Apr. 28	Sterling Coal Mining Co.	947
"	May 4	" " " "	1021
"	" "	" " " "	984
Col #6	" 5	" " " "	747
Gallitzin	" 7	" " " "	1005
"	" "	" " " "	376
"	" "	" " " "	472
"	" "	" " " "	580
"	" "	" " " "	965
"	" "	" " " "	983
"	" "	" " " "	536
Columbia #6	" 10	Sterling Coal Co.	392
Gallitzin	" "	" " "	976
"	" "	" " "	991
Columbia #6	" 12	" " "	608

Statement of shipments of coal transferred to Mitchell Coal & Coke Company at South Amboy, N. J., by various coal companies between August 1st, 1898, and June 30th, 1900, inclusive.

Date	Transferred by	Cwt.
Sept. 1898	Puritan Coal Mining Co.	473
" "	" " " "	580
" "	" " " "	470
" "	" " " "	614
Dec. 7	Cambria Coal Mining Co.	658
" "	" " " "	519
" "	Sterling Coal Company	640
" "	" " "	632
" "	" " "	661
" "	" " "	658
Mar. 20, 1899	Columbia Coal Mining Co.	1037
" "	" " " "	1039

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Date		Transferred by	Cwt.
"	"	" " "	1009
"	"	" " "	1037
"	"	" " "	1007
"	"	Sterling Coal Co.	649
"	"	" " "	659
"	"	" " "	659
"	"	" " "	648
"	"	" " "	676
"	"	" " "	641
"	"	" " "	673
"	"	" " "	660
"	"	" " "	646
"	"	" " "	667
Apr. 10,	"	Columbia Coal Mining Co.	982
"	"	" " "	964
"	"	" " "	985
"	"	" " "	978
"	"	" " "	1013
"	"	" " "	1015
" 15	"	" " "	996
" 17	"	" " "	1014
" 17	"	" " "	1017
"	"	" " "	989
"	"	" " "	974
"	"	" " "	995
June 7	"	" " "	989
"	"	" " "	1024
Sept. 21	"	" " "	630
"	"	" " "	620
" 21	"	Loyal-Hanna Coal Co.	428
"	"	" " "	853
"	"	" " "	521
Jan.	1900	Columbia Coal Mining Co.	1035
			994
			980
			1014
			1063

Date	Transferred by						Cwt.
							1048
Mar. 24, 1900	Puritan Coal Mining Co.						1000
"	"	"	"	"	"	"	624
"	"	"	"	"	"	"	602
"	"	"	"	"	"	"	835
"	"	"	"	"	"	"	817

Meeting January 22nd, 1908, 3:30 p. m.

Present:

HON. THEODORE F. JENKINS, Referee;

MESSRS. GILFILLAN and GOWEN.

JAMES L. MITCHELL, recalled for cross-examination.

By MR. GOWEN:

Q. Have you made an examination and are you now prepared to tell us what the rate of freight was that you paid on coal shipped to the Long Island Coal Company which is embraced in the shipments included in the action?

A. In February and March, 1900, we paid \$1.10 to Jersey City on floats, and in April and May we paid \$1.45 to Jersey City on floats.

Q. How did those rates compare with the rates to Jersey City prevailing at that time on other than railroad supply coal?

A. I did not have any trade beyond Jersey City the way that coal went.

Q. But without regard to the ultimate destination of the coal, how did those rates compare with the rates that you paid on shipments made by you to Jersey City?

A. It would be less, the same as the rates to Greenwich are less than the rates to Philadelphia.

(Question read.)

A. The rate to Jersey City was \$1.35, on tracks at Jersey City.

Q. When you were paying \$1.10 on the Long Island coal?

A. Yes.

Q. What was it when you were paying \$1.45?

A. \$1.70.

Q. You made no shipments after May?

A. I do not think we did. I did not find any.

Q. How as to the rates paid by you on coal shipped by you to the Lehigh Valley Railroad? Can you give us the rate paid on that coal and how it compared with the commercial coal?

A. I could not. Any coal we shipped to the Lehigh Valley Company, or rather any commercial coal that we shipped on the Lehigh Valley road, we had a through rate, and I do not know what proportion of that rate the Pennsylvania got, so I could not tell whether that was a special rate to Mount Carmel and Wilkes-Barre or not.

Q. But your shipments to the Lehigh Valley Company were delivered to that company by the Pennsylvania Railroad Company at Mount Carmel, were they not?

A. Yes, sir.

Q. And you paid the freight to Mount Carmel?

A. We paid the freight to Mount Carmel.

Q. Can you tell us, in the first place, what the rate paid by you was, and what the rate to Mount Carmel on commercial shipments was at the time?

A. I did not have any companies in Mount Carmel then.

Q. You do not know?

A. No.

Q. Then tell us what you paid on the Lehigh Valley coal.

A. I think we paid \$1 or \$1.10, I am not positive. The Lehigh Valley coal was billed this way: Coal to Rochester, New York, \$1.80 a net ton f. o. b. Wilkes-Barre; so we had nothing to do with it. So I could not tell whether it is a special rate or not, because any other commercial coal we had, we got a through rate to the point on the Lehigh Valley road.

Q. Then, in point of fact, this coal was shipped under a special rate?

A. It was, I think, a special rate, but I have no way of knowing that.

Q. How as to the coal which you shipped to the Delaware, Schuylkill and Susquehanna Railroad Company?

A. The rate which we paid was \$1.50 to Drifton, I think, or Drifton Junction. The rate we paid was \$1.50 and we got a rebate of 15 cents a ton, and during the same time we sold some coal to Price & Clark at Hazleton, for the Cross Creek Coal Company, the same destination, and the rate was the same, \$1.50, and we got the same rebate, 15 cents, making a rate of \$1.35.

Q. In both cases that was coal for railroad supplies?

A. No.

Q. What was it?

A. The coal I believe they used at the colliery for blacksmith purposes. I sold it to a dealer in Hazleton but it was shipped to the Cross Creek Coal Company.

Q. You do not know what the commercial rate to Drifton or Drifton Junction was at the time?

A. A dollar and a half. We paid a dollar and a half on both the railroad supply coal and the commercial coal.

Q. That, you think, was the rate at the time?

A. Yes, sir, and we got the same train, put in the same train.

Re-direct-examination.

By MR. GILFILLAN:

Q. You heard Mr. Long's and Mr. Hobbs' testimony here, did you not?

A. Yes, sir.

Q. In connection with the tracks and grades and method of putting in cars and taking them out at Glen White, Altoona and Gallitzin?

A. Yes, sir.

Q. At Altoona did the railroad engine push the empty cars in on the siding on the Altoona Coal & Coke Company's property?

A. Yes, sir.

Q. Was the same thing done at Glen White?

A. Yes, sir.

Q. Was the same thing done at Gallitzin?

A. Yes, sir.

Q. By Gallitzin I mean the Mitchell Coal & Coke Company's mine at Gallitzin.

A. Yes, sir.

Q. When the loaded train was taken out from Altoona, would the Altoona Coal & Coke Company's engine bring the loaded cars down to near a point near the junction point of the railroad company and the siding of the Altoona Coal & Coke Company?

A. Yes, sir.

Q. And then the Pennsylvania Railroad engine would take the loaded train and pull it out?

A. Yes, sir.

Q. Did it require one or two engines?

A. It depended altogether on the quantity of cars they had.

Q. Generally?

A. They usually had two engines.

Q. Would one of them run up behind the load, as they did at Gallitzin, and push, and the other pull the train?

A. I could not say about that, it has been so long since I have seen them handle cars there.

Q. Was the method the same?

A. The method is practically the same at both places, or the three places. The cars were brought on the siding close to the main line of the Pennsylvania road, and the Pennsylvania Railroad engine, or engines, took the loaded cars off of that siding.

Q. The Altoona and the Glen White did what the Mitchell Coal & Coke Company did at Gallitzin; after the empty cars were put in, they shunted them around and had them loaded and brought them down and made up the train?

A. Yes, sir.

Q. Mr. Hobbs said that they could not use a regular engine of the Pennsylvania Railroad because the tracks would have to be practically rebuilt at Altoona and Glen White. From your observation during the period of this action of the Clark equipment and switches, etc., that was all there was necessary to do, was it not, to make it like Gallitzin?

A. That was all, to put the tracks in the same way that Gallitzin had them.

Q. Did the railroad make you put the tracks at Gallitzin in strong enough to carry a modern Pennsylvania Railroad engine?

A. Yes, sir.

Q. During the period of the action, the Glen White Coal Company, as a matter of fact, did use an old style Pennsylvania Railroad engine for this shifting, did it not?

A. Not the Glen White, no, sir.

Q. Which did?

A. The Altoona Coal & Coke Company.

Q. Used an old style Pennsylvania engine?

A. Yes, sir.

Q. How far is the Altoona, the headquarters of the

Pennsylvania Railroad Company, from the Altoona Coal & Coke Company's mine?

A. The mine or the junction point?

Q. Give me the mine first.

A. I judge it was nine miles.

Q. And from the junction of the Altoona Coal & Coke Company's track and the Pennsylvania Railroad track to Altoona?

A. Something over six miles.

Q. Give me the same distance on the Glen White.

A. The Glen White and Altoona Coal & Coke Company, their junction point, I do not suppose it is more than six hundred, five or six hundred feet, apart where they connect with the main line of the Pennsylvania Railroad.

Q. So that would be the only difference from the junction point of the Altoona, between the Altoona and Glen White?

A. Yes; the Glen White is five or six hundred feet further.

Q. How about the mine of the Glen White as compared with Altoona, the headquarters of the Pennsylvania Railroad?

A. I cannot remember unless the maps are here.

Q. It is about the same?

A. The Glen White is a little bit shorter.

Q. Than the Altoona Coal & Coke Company?

A. Than the Altoona Coal & Coke Company, maybe a mile, half a mile or so.

Q. The Latrobe Coal & Coke Company mine is in the Latrobe region?

A. Yes; it is west of Gallitzin and Altoona.

Q. How much further west is the Latrobe Coal & Coke Company's mine than that of the Gallitzin or Glen White or Altoona Coal Company's mines?

A. Some sixty miles.

Q. Mr. Strong testified, page 285 of the testimony, as follows: "Q. I understand that the routes which you

have mentioned to the various points just named were available for the shipment of coal and coke from the Clearfield region to the points named under tariffs in existence between March 1st, 1899, and May 1st, 1901?

A. I think there was one exception there. Q. What is it? A. That is in the case of Boston. I do not think we had any rate by the New York, New Haven & Hartford on bituminous coal at that time. We might have had on coke. I also wish to say in connection with these routes by Mechanicsville and the Boston & Maine Railroad, we had no rate on coal by that route." I do not want to take up your time with those exceptions, but I want you to tell the Referee whether those various rates were available for the shipment of the coal from the Clearfield region.

A. They originated on the Pennsylvania Railroad and had to go over the Pennsylvania Railroad before they could go over the other routes.

Q. In other words, the point of destination could be reached by all these roads that Mr. Strong mentioned, but the starting point could be reached only by the Pennsylvania Railroad?

A. That is all.

Q. About the rates; you testified on page 59 of the testimony: "Who was responsible on this tonnage contained in those shipments which have been submitted to the Referee as shipments made by the Mitchell Coal & Coke Company? A. The shipper was always responsible. Sometimes the consignees paid the freight and deducted it from the bill." I want to know to whom you referred when you mentioned "shipper" in cases of coal sold f. o. b. the mines?

A. The Mitchell Coal & Coke Company.

Q. Was the Mitchell Coal & Coke Company held responsible by the railroad for all freight, no matter whether sold at a delivered price at the destination, whether the freight was prepaid, or whether it was sold f. o. b. the mines?

A. Yes, sir.

Q. In some cases were you bonded for the freight, or what was the requirement, if there was any such?

A. We gave a bond for all tidewater shipments.

Q. For the freight on all tidewater shipments?

A. Yes, sir. I am not positive that that covered line shipments.

Q. By line shipments, you mean delivered at any point along the rail?

A. Yes, sir; all rail shipments.

By THE REFEREE:

Q. On the Pennsylvania Railroad, you mean, or any road?

A. On the Pennsylvania and other roads.

By MR. GILFILLAN:

Q. Did the Pennsylvania Railroad ever confiscate or take any of the coal that you shipped and sold to a consignee f. o. b. the mines?

A. Yes, sir.

Q. With whom did they settle? With the consignee or with you?

A. They always settled with the Mitchell Coal & Coke Company. If a car was wrecked, they would notify the shipper or the Mitchell Coal & Coke Company, notify us what was saved and notify us what department of the Pennsylvania Railroad to charge it to.

Q. Without regard as to whether it was sold at a delivered price, freight prepaid, or f. o. b the mines?

A. It did not make any difference.

Q. There was some testimony given by Mr. Scott, I think, with relation to sales made to the New Jersey Zinc Company, Thomas Iron Company, Carbon Iron & Steel Company, Crane Iron Company, Allentown Iron Company and other companies, all by or through Pilling & Craue. Do you remember that testimony? I think it was taken from the invoices, your invoices.

A. Yes, sir.

Q. I want you to tell the Referee just what the arrangement was with Pilling & Crane?

A. Pilling & Crane had the agency for all, or nearly all, of our furnace coke, the selling of our furnace coke, and we paid them five cents a ton for selling it. The Mitchell Coal & Coke Company was responsible for all losses and things of that kind, and they had five cents a ton for selling and collecting.

Q. Were they anything other than a mere selling agent?

A. Mere selling agents for all furnace coke, but foundry coke they bought outright, either at the ovens or at a delivered price, and we always guaranteed the freight payment. During this period, the period of this suit, from April, 1897, to May 1st, 1901, I think there was 32,000 tons of foundry coke that we sold them.

Q. Outright?

A. Outright; and they could make any profit they wanted to.

Q. What was your approximate sales, if you remember, under the other arrangement where they were selling agents?

A. I cannot say. It would anyway be four or five hundred thousand tons.

Q. The Mitchell Coal & Coke Company was responsible for the bad debts?

A. Yes, sir.

Q. And Pilling and Crane had nothing to do, as I understand it, with the transaction except to sell the coal?

A. They sold the coal.

Q. And got five cents a ton commission?

A. Yes, sir.

Q. Your invoice book shows that the coal was billed to Pilling & Crane, I think.

A. Yes, part of the period. I do not know, but I think part of the period the bill book might show Pilling & Crane, coke shipped to such and such a furnace.

Q. No matter what is in the invoice book, is what you have given us the true contractual relation between the Mitchell Coal & Coke Company and Pilling & Crane during the period of this action?

A. Yes, sir. The bill book shows the commission paid them each month on each shipment, deducted from the regular bill price.

Q. Referring to Mr. Strong's testimony, that these roads that he testified to the last time he was on the stand, were available for shipment from the Clearfield region, as a matter of fact when you did ship to any of the points reached by these various roads, other than the Pennsylvania Railroad that he speaks of, how was your freight contract made?

A. Made with Mr. Searles, the coal freight agent of the Pennsylvania Railroad.

Q. To the point of destination?

A. Yes, sir.

Q. And the Pennsylvania Railroad and the other railroads settled among themselves how it was to be divided?

A. Yes, sir.

Q. Were you here when Mr. D. W. Jones testified about the Latrobe engine?

A. Yes, sir.

Q. Have you seen that Latrobe engine?

A. Yes, sir.

Q. Will you just tell what that Latrobe engine does and the character of it?

A. It is a light—you would call it a dinky engine. It is used for piling the larrie on top of the coke ovens. I suppose it could go down and haul an empty car if they wished to.

Q. Is it of the style or character of engine that was used by the Gallitzin or the Glen White or Altoona for bringing in empties or taking out loads to a point near the junction of the main line?

A. No, sir.

Q. What was the ton weight of your engine at Gallitzin?

A. I could not say. We had a light one at first and had to get a heavier one.

Q. Is it a heavier engine than the one at Latrobe?

A. Oh, yes.

(Adjourned until Saturday, January 25th, 1908, at 11 a. m.)

Meeting Saturday, January 25th, 1908, at 11 a. m.

Present:

HON. THEODORE F. JENKINS, Referee.

MESSRS. GILFILLAN and GOWEN.

J. L. MITCHELL, re-direct-examination resumed.

By MR. GILFILLAN:

Q. You said last time you were on the stand that the shipper, the Mitchell Coal & Coke Company, was responsible for all freight to the railroad, whether the coal was sold f. o. b. the mines, at a delivered price at the destination, or the arrangement was that the freight would be prepaid?

A. Yes, sir.

Q. You also said, I believe, that prior to the time of the regular published rates when there was no rebate from them, you made the arrangements with Mr. Searles and then made your consequent arrangement for the price of the coal with the consignee, allowing for that freight rate which you had under contract with Mr. Searles. Is that right?

A. Yes, sir.

Q. Were there any exceptions to that?

A. Yes, sir; there is one. The Warwick Iron Company part of that time made their own.

Q. How about the Pennsylvania and Maryland Steel Company?

A. That was always at the open rate, published rate.

Q. Can you tell about how many tons were sold to the Warwick Company during this period when you say they made their own freight rate?

A. From the first of January, 1897, to the first of January, 1900. I think they billed probably a thousand tons a month during that time.

Q. And started in June, 1897, and ended in January, 1900?

A. Yes, sir.

Q. Did you ever purchase any coal or coke from the Altoona Company?

A. Yes, sir; I purchased some coke.

Q. How did you purchase it, f. o. b. the mines?

A. F. o. b. the mines.

Q. Did you get the 15 or 20 cents, the 20 cents lateral that was allowed the Altoona Company?

A. No, sir.

Q. Will you just tell the Referee about what the practice of the railroad was about selling coal for freight?

A. If a car of coal was refused, Mr. Searles' office would notify us and if it laid there several days they would send us a notice that if we did not dispose of it they would sell the coal for the freight.

Q. Would they send the notice to the Mitchell Coal & Coke Company?

A. To the miner and shipper, the Coal & Coke Company.

Q. Would that notice come if the coal was sold f. o. b. the mines?

A. Yes, sir.

Q. In all your relations with the Pennsylvania Railroad as to the arrangements for freight rates, etc., was that all made with the coal freight department?

A. Yes, sir.

Q. Who had charge of the rates?

A. Yes, sir.

Q. But none was made with the maintenance of way department?

A. No, sir.

Q. Or the operating or motive power departments?

A. No, sir.

Q. To whom were you referred when you wanted to open up negotiations to get the allowance for your engine at Gallitzin the same as Glen White and Altoona?

A. The general superintendent.

Q. Did you ever have any negotiations with Mr. Searles along that line?

A. No, sir.

Q. Did you ever have any negotiations with Mr. Prevost?

A. No, sir.

Q. Mr. Joyce?

A. No, sir.

Q. Who referred you to the superintendent?

A. His headquarters were Altoona and we took the matter up with him.

Q. Did you ever apply to Mr. Searles?

A. No, sir.

Q. Or Mr. Joyce?

A. No, sir. I saw some correspondence one time where the general superintendent took it up with Mr. Searles.

Q. Mr. Searles was the man who had charge of the allowance of those laterals, so far as you knew, if you knew?

A. I did not know at that time, no, sir.

Q. Did you know afterwards?

A. I have known it within the last two years.

Q. At the last session Mr. Gowen interrogated you

about shipments to Jersey City that were consigned to the Long Island Railroad, and you gave some figures of rates. Was that a special rate to the railroad?

A. I do not know, I do not think it was, but I could not tell as I had no business on the Long Island Railroad shipped in that way. Of course, it was a lower rate than to Jersey City, but that is always the case, the rate is lower to a point beyond; they had to pro rate.

Q. On shipments here to Philadelphia the rate is higher than to Greenwich, which is going farther?

A. Yes, sir.

Q. That is invariably the case?

A. Always the case, yes, sir.

Q. Was the rate to the Brooklyn water works as cheap as to the Long Island Railroad?

A. I do not know. I do not think I shipped to the Brooklyn water works.

Re-cross-examination.

By MR. GOWEN:

Q. In the statement of your shipments which you have furnished, you have given in all cases the name of the consignee and the destination of the coal, have you not?

A. Yes, sir.

Q. That statement covers only shipments which were made to and received by those consignees?

A. Yes, sir.

Q. Therefore in the case of all shipments embraced in the statement where the coal was sold f. o. b. the mines, the coal reached the consignee or purchaser?

A. I think so, as far as I know.

Q. You have not embraced in those statements any coal which was confiscated by the railroad or which was lost in transit?

A. No, I do not think so. I think that was taken out.

Q. And in the case of all coal sold f. o. b. the mines which reached the destination, the freight was paid by the purchaser?

A. Yes, I think so.

Q. You have spoken of a bond which you thought the railroad company at one time required you to give, covering freight, and you said that your recollection was that that was limited to tidewater shipments.

A. Yes, sir; but I have discovered another arrangement that I made several years ago, where the cashier of the bank that I did business in in Tyrone at the time wrote the treasurer of the Pennsylvania Railroad that he would honor all drafts drawn by the Pennsylvania Railroad on me for freight, and in that way those freights were paid.

Q. Those were freights for which you were responsible?

A. Yes, sir.

Q. In the case of the bond which you speak of, as a fact, that was limited to tidewater shipments, was it not?

A. I think that was tidewater shipments.

Q. And on tidewater shipments, due to the fact that the coal after reaching Greenwich or South Amboy was loaded on boats, the railroad company lost the control and possession of the coal before the freights were paid, did it not?

A. No; the railroad company at that time—I have forgotten the date, I think I put it in once before—in the early part of this action, the coal was shipped down to South Amboy or Greenwich and loaded by the Pennsylvania Railroad on boats and weighed by them and the freight paid, then they drew on us for the freight when it was loaded on the boat.

Q. But during the latter time and during the time that you gave this bond, practically, the railroad did not do that, did it?

A. Yes, sir; when I first commenced to ship to tide-water was when I gave this bond.

Q. You have spoken of some coal purchased from the Altoona Coal & Coke Company one which you say you did not receive any lateral allowance?

A. Yes, sir.

Q. You did not perform any service in the moving of the coke, the service that was performed by the Altoona Coal & Coke Company, in moving it to the consigning point junction, did you?

A. Yes, sir.

Q. The Long Island Railroad coal which you shipped was consigned to the Long Island Railroad Company on floats at Jersey City, was it not?

A. Yes, sir.

Q. So that was the point of delivery to the Long Island Railroad Company?

A. Yes, sir.

(Adjourned until Tuesday, January 28th, 1908,
at 11:45 a. m.

Philadelphia, Pa., Tuesday, February 4, 1908.

3:30 p. m.

Present:

HON. THEODORE F. JENKINS, Referee.

MESSRS. GILFILLAN and GOWEN.

J. L. MITCHELL, recalled.

By MR. GILFILLAN:

Q. Tell the Referee the weights and character, so far as you know them, of the locomotives during the period of this action that were used at the Altoona, the Glen White, the Latrobe and Gallitzin mines; take up first the Altoona mine.

A. The class I locomotive.

Q. What do you mean by class I?

A. The Pennsylvania Railroad class I locomotives.

Q. What was the weight of that locomotive?

A. 153,000 pounds.

Q. What would that be in tons about?

A. 76 net tons.

Q. What about the Glen White?

A. That was a smaller locomotive. It was not a regular Pennsylvania Railroad engine.

Q. What was the weight in tons of that locomotive?

A. I could not say. It was a good deal lighter than the other locomotives.

Q. What was the weight in tons of the first locomotive that was used at Gallitzin?

A. Between 20 and 25 tons.

Q. And how long was that operating?

A. I think from October until the following April.

Q. October, 1899, to April, 1900?

A. Yes, sir.

Q. And when was the second locomotive put on at Gallitzin?

A. In May, 1900.

Q. What character of locomotive was that?

A. Class I.

Q. The same as the Altoona?

A. The same as the Altoona.

Q. And about the same weight?

A. Yes, sir.

Q. Was that kind of locomotive used down to May, 1901?

A. Yes, sir.

Q. What was the weight of the Latrobe engine?

A. It was just a small dinkey engine.

Q. About how many tons?

A. 7 to 9 tons.

J. G. SEARLES, recalled.

By MR. GILFILLAN :

Q. Have you your letter copy books for the year 1899 with you?

A. Yes, sir.

Q. Will you please get them?

(Witness produces books.)

Q. Did you write to J. M. Wallis, general superintendent at Altoona, concerning Mitchell's application for lateral allowance on the locomotives?

A. I do not know whether I wrote to Mr. Wallis or not.

Q. Did you write to anybody else?

A. I wrote to somebody.

Q. To whom do you think you wrote?

A. I think it was the general superintendent, I do not know whether it was Mr. Wallis or Mr. Sheppard.

Q. Will you find those letters bearing on that in your books?

A. We have not those books here. I thought you meant our letter of transmittal of the books. I do not know how many books there are running over the year 1899.

Q. I want the books containing the letters that you wrote to both Wallis and Sheppard concerning the application of Mitchell to Wallis or Sheppard for lateral allowance based upon the fact that he placed a locomotive at Gallitzin; the letters to which I have already referred.

A. I think I wrote either to Mr. Sheppard or to Mr. Wallis; I am not sure whether it was a letter or whether I had a personal conversation with them about it.

Q. How many letter books would you have during the year?

A. I should say thirty or forty; perhaps one hundred. I do not know. I would not be surprised if there were a hundred.

Q. What have you there?

A. These are the transmittal letter books, that is all.

Q. You remember you did write a letter?

A. I remember that I did something, but whether I wrote a letter or whether I talked with Mr. Sheppard or Mr. Wallis about it I do not know; but I do remember that the question was up.

Q. Do you remember that you directed the superintendent not to allow the lateral allowance?

A. I am not prepared to say what I did. I do not think it is possible to get the books here this afternoon because our records are all stored away in the storage rooms.

Q. The freight rates on coal and coke were cheaper from the Latrobe region than they were from the Clearfield region to points west of Pittsburgh?

A. Yes.

Q. How much?

A. I could not tell offhand. There is very little either coal or coke shipped from Gallitzin or the mountain mining region to western points. I do not know that I ever knew of any coke. I cannot recall it. There is some coal, what is known as smithing coal, shipped to western points, but that would not be in competition with coal from the Latrobe or from the Pittsburgh districts, because it is a different character of coal used for a different purpose.

Q. I am speaking about shipments of coal from the Latrobe mines and the shipments of coal from either the Glen White, Altoona or Gallitzin mines; the freight rate would be higher from the Altoona, Glen White and Gallitzin mines than from Latrobe to points west?

A. Yes, sir; to points west.

Q. And that was during the period of the action?

A. Yes, sir.

Q. It was fifteen cents on coal?

A. I would not like to say; I do not recall.

Q. It was about fifteen?

A. I would say it was as much as fifteen.

Q. I am referring to coal shipped from Altoona, Glen White and Gallitzin as one class and coal shipped from the Latrobe mines as another class.

A. Yes, sir.

Q. If there was a shipment west from either Altoona, Glen White or Gallitzin, it would be about, we will say roughly, fifteen cents higher to points west of Pittsburgh than from Latrobe?

A. It would be higher; I would not like to say how much.

Q. You said it would be at least fifteen cents?

A. I should say it was at least fifteen cents. I would not want to say positively.

By MR. GOWEN:

Q. Have you made up a statement showing the rates from Latrobe to points east of Latrobe and west of Lewistown Junction?

A. Yes, I have made up a list, I think.

(Witness produces list.)

By MR. GILFILLAN:

Q. On short hauls you pay a different rate from what you pay on long hauls, do you not?

A. I do not think I understand that. Yes, undoubtedly.

Q. You also pay a different rate per mile, a higher rate, or you charge a higher rate per mile on the short hauls than you do on a long haul?

A. Yes, sir.

Q. Do you not?

A. Yes, sir.

Q. This statement which you have submitted shows rates on what are known as short hauls from Latrobe mines?

A. It would not be a very short haul from the Latrobe mines. If you had asked that question in regard

to the movement from Kittanning Point or Gallitzin to Altoona, then I would say that was a short haul.

Q. It is a short haul, is it not, compared with the haul to Philadelphia, New York or Boston?

A. Decidedly.

Q. And it is a short haul compared with the haul from Kittanning Point to Philadelphia, New York or Boston?

A. These?

Q. Yes.

A. Yes.

MR. GILFILLAN: I have no objection to this statement going in as part of Mr. Searles' testimony, provided it is confined to points to which the Mitchell Coal & Coke Company shipped.

By MR. GILFILLAN:

Q. Did the Latrobe mines, do you know, actually ship to any of these points that you have mentioned in this statement?

A. I think they did.

Q. Do you know; did you see it?

A. No, I have not examined, but the very fact that we had rates in effect would indicate that they had made the shipments.

Q. That is all you know, that because you had rates in effect, you think Latrobe made shipments to the points named in this sheet?

A. Yes.

Q. If any shipments were made by Latrobe to the points mentioned on this sheet you made the lateral allowance to Latrobe?

A. I presume we did. These rates are as follows:

"From LATROBE

TO	COKE RATES (Per 2000 lbs.)		BITUMINOUS COAL RATES (Per 2240 lbs.)	
	Apr. 1, 1897 to Dec. 31, 1899.	Jan. 1, 1900 to May 1, 1901.	Apr. 1, 1897 to June 21, 1899.	June 22, 1899 to May 1, 1901.
Altoona	\$.70	\$.70	\$1.00	\$.95
Duncansville	....	....	....	.95
Newry	.78	.78	1.02	.98
Hollidaysburg	.76	.76	1.00	.95
Williamsburg Jct.	....	....	....	.97
Frankstown	.82	.82	1.07	1.00
Reese	.86	.86	1.11	....
Horrell	....	....	....	1.07
Flowing Spring	.94	.94	1.20	1.10
Springfield Jct.	1.00	1.00	1.27	1.15
Wertz	1.04	1.04	1.31	1.19
Royer	1.10	1.10	1.38	1.24
Morrell	....	....	....	1.27
Oreminea	1.18	1.18	1.47	1.29
Franklin Forge	1.10	1.10	1.27	1.15
Williamsburg	1.04	1.04	1.31	1.19
Covedale	....	....	....	1.24
Carlim	....	....	....	1.25
Mt. Etna	....	....	....	1.29
Loop	.80	.80	1.04	.93
Reservoir	.82	.82	1.07	....
Kladder	.84	.84	1.09	1.03
Stanfield	.86	.86	1.11	1.06
McKee	.90	.90	1.16	1.08
Rodman	.94	.94	1.20	....
Roaring Spring	.96	.96	1.22	1.12
Ore Hill	1.00	1.00	1.27	1.17
Erb	.98	.98	1.25	....
Martinsb'g Branch	1.06	1.06	1.34	1.20
Curry	1.08	1.08	1.36	1.22
Henrietta	1.16	1.16	1.45	1.29
Elizabeth Furnace	.76	.80	....	....

From Bolivar same rates would have applied as shown above from Latrobe."

Adjourned to Wednesday, February 5, 1908,
one o'clock p. m.

Philadelphia, Pa., February 8, 1908, 1 p. m.

Present:

HON. THEODORE F. JENKINS, Referee.

JOSEPH GILFILLAN, Esq., for Plaintiff.

FRANCIS I. GOWEN, Esq., for Defendant.

J. G. SEARLES, recalled.

By MR. GILFILLAN:

Q. Did you make a search among your letter copy books?

A. Yes, sir.

Q. Did you find any letter or letters addressed to the General Superintendent at Altoona, between, I will say, July, 1899, and May, 1900?

A. No sir; in regard to this matter?

Q. Yes sir.

A. No, sir.

Q. Did you find any letter or letters relating to that subject?

A. Yes; I found a reference to Mr. Sheppard, I think, some time in 1898.

Q. Will you turn to it?

A. Yes, sir; here it is. (Producing letter book.)

Q. That is in September?

A. September 28, 1898.

MR. GILFILLAN: I offer in evidence, this letter of September 28th, 1898, from J. G. Searles, Coal Freight Agent, to F. L. Sheppard, General Superintendent, which is as follows:

Letter of Ref. F. L. Sheppard, Sept. 26th.

Relative to Mitchell Coal & Coke Co. running their own locomotive on P. R. R. tracks leading from Main Line to their mines at Gallitzin.

Philadelphia, Sept. 28, 1898.

Respectfully returned to

Mr. F. L. Sheppard,

PERSONAL

General Superintendent.

I should be very much afraid of an arrangement of this kind, and think we should decline to permit the Mitchell Coal & Coke Co. to put on their own engine. I think it would be very much better to try to improve the service with our own engines and crews.

(Signed) J. G. Searles,

C. F. A.

By MR. GILFILLAN :

Q. Is there any other letter or letters that you have written to Mr. Sheppard or Mr. Wallace, with reference to the question of allowances to Mitchell?

A. I could not find anything at all but this reference.

Q. Did you look.

A. Yes, sir; we looked through our letter books for the years 1898, 1899 and 1900.

Q. Did you look personally?

A. No, I did not look personally.

Q. Who did the looking?

A. My clerks did; they looked. Every letter is indexed.

Q. How many letter books have you for November, 1899, about?

A. I could not say, probably three or four; I do not know; possibly not that many.

Q. The arrangement that you have referred to was the application of Mitchell for allowances for the use of the engine?

A. Of course I could not say off-hand exactly what it was. My recollection is that it was an application of Mr. Mitchell to be permitted to put on an engine to do his own work there.

Q. That application was made to the superintendent?

A. To the superintendent, or general superintendent.

Q. The superintendent then referred it to you?

A. Yes, sir.

Q. You made your decision as indicated in the letter?

A. I gave my opinion.

Q. That is what I mean.

A. Yes, sir.

Q. Your opinion was followed?

A. I do not know about that; no, I do not think it was, because Mr. Mitchell put on the engine afterwards.

Q. Is that all that that deals with?

A. That is all.

Q. There is more than the mere putting on the engine involved in the word "arrangement", is there not? Was there not coupled with that the fact that he was to be paid for the work that was done?

A. I do not know whether there was or not.

Q. You do know, don't you, as a matter of fact?

A. No; I assumed.

Q. Were not you here when Mr. Gowen produced the letters and the testimony was given?

A. No, sir.

Q. You were not?

A. No, sir.

MR. GILFILLAN: I offer in evidence the letter of September 26th, 1898, from F. L. Sheppard, General Superintendent, addressed to J.G.Searles, Coal Freight Agent, as follows:

Altoona, Pa., September 26, 1898.

Communication from R. L. O'Donnel, 9-22-98.

Subject: Mitchell Coal & Coke Co.—Running a locomotive owned by them on our tracks leading from the Main Line to their mines at Gallitzin.

Personal

Respectfully referred to

Mr. J. G. Searles,
Coal Freight Agent.

During the scarcity of cars and so as to make available those that arrive late, Mr. Mitchell does some little hauling around with either horses or mules at times to get cars in position.

In occasional conversations he has rather intimated that he ought to be paid for this. Do you not think it likely if we assent to putting on an engine and give him the cars at the junction of the Main Line to handle, he would come in with a bill large enough to take all the profit out of the business—that is, if there is any. Of course, if Mr. O'Donnell could make some sort of an agreement, as suggested in his letter, by which we would not be at any expense in the matter it might be desirable. I do not know, however, whether this agreement would be recognized later on.

Won't you kindly give me any suggestions that may occur to you in the matter.

(Signed) F. L. Sheppard,
General Superintendent.

By MR. GILFILLAN:

Q. You received a letter of which what I have read is a copy?

A. I must have, because it is referred to here in my reference.

By MR. JENKINS:

Q. It had these enclosures?

A. Yes, sir.

Q. That letter that you received had the letter from R. L. O'Donnell, Assistant Superintendent, to F. L. Sheppard, General Superintendent, dated September 22, 1898; and the letter of September 8, 1898, from F. L. Sheppard, General Superintendent, to R. L.

O'Donnell, Assistant Superintendent, and letter of September 7, 1898, from Mitchell Coal & Coke Company to F. L. Sheppard, General Superintendent?

A. Yes, sir.

Q. The letters of September 22, 8, and 7, were enclosed in this letter of September 26th, from F. L. Sheppard, to you?

A. I think they were.

MR. GILFILLAN: The letters are offered in evidence, as follows:

Sept. 22, 1898.

F. L. Sheppard,
General Superintendent.

Dear Sir:

In reply to your letter of Sept. 8th, forwarding letter from the Mitchell Coal and Coke Co., asking permission to run a locomotive owned by them on our tracks leading from the Main Line to the Mitchell Coal and Coke Co.'s mines at Gallitzin.

We have carefully considered this subject, and can not see but that the running of the locomotive by the Mitchell Coal and Coke Co. would be an advantage to our company, provided our company is not put to any more expense than appears in this letter.

If you agree with us, and desire us to take the matter up with the Mitchell Coal and Coke Co., we will then arrange with them the details governing the movements. These details, however, would not in any way affect the privilege granted.

Yours very truly,

(Signed) R. L. O'Donnell,

Asst. Supt.

Altoona, Pa., Sept. 8th, 1898.

Communication from The Mitchell Coal & Coke Company, September 7th, 1898.

Subject: Delivery of cars at Gallitzin.

Respectfully referred to

Mr. R. L. O'Donnell,

Assistant Superintendent.

Please note enclosed letter from Mr. J. L. Mitchell. He has talked to me once or twice about this matter and I asked him to take it up with you. I think he either wants us to buy his siding or build some additional siding, but he has been complaining for some time past about our poor service.

Will you please advise me what I may say to him?

(Signed) F. L. Sheppard,

General Superintendent.

Philadelphia, Pa., September 7th, 1898.

F. L. Sheppard, Esq.,

Gen'l. Supt., P. R. R.,

Altoona, Pa.

Dear Sir:

We are having a great deal of trouble at our Gallitzin Mine, through the irregular delivery of empty cars. Very often empties are being placed on the siding after the coal train is done working. These cars, we have to haul in with teams. On account of heavy loaded trains, it takes the coal train so long to do the shifting, that we have to suspend work from 15 minutes to one (1) hour almost every day. On account of the delay while the train is in, which means considerable expense to us, also the expense of hauling empty cars with horses, we would like to put on our own locomotive, and handle the cars between the ovens and the Main Line.

We are building some more ovens this Fall, which means more loaded cars, and consequently more delay each day.

Awaiting your reply, we remain,

Yours very truly,

The Mitchell Coal & Coke Co.

(Signed) J. L. Mitchell, B.

President.

By MR. GILFILLAN:

Q. You had a table here yesterday of rates?

A. Yes, sir.

Q. Have you it now, or has the stenographer?

A. The stenographer has it.

Q. Do you remember from that table what you had stated as the freight rate from Latrobe to Altoona, on coal?

A. I do not remember what it was.

Q. That table showed one dollar from Latrobe to Altoona. Do you know what the freight rate was from Hastings to Altoona?

A. No, I do not.

J. L. MITCHELL, recalled.

By MR. GILFILLAN:

Q. During the period of the action what was the freight rate from Latrobe mine to Altoona?

A. One dollar, that is the latter part of the action.

Q. What was it prior, do you remember?

A. I think it was a little more.

Q. During the same period that it was one dollar from Latrobe to Altoona, what was it from Hastings Colliery, belonging to Mitchell Coal & Coke Company, to Altoona?

A. \$1.03.

Q. How much nearer Altoona is the Hastings colliery of Mitchell Coal & Coke Company, than the Latrobe mines?

A. At least 25 miles.

By MR. JENKINS:

Q. That means \$1.03 a ton, does it?

A. Yes, sir.

By MR. GILFILLAN:

Q. That is at least 25 miles more of a haul from Latrobe to Altoona, than from the Hastings colliery?

A. Yes, sir.

Cross-examination.

By MR. GOWEN:

Q. Where is the Hastings colliery located?

A. On the Cambria and Clearfield branch.

Q. The Latrobe operation is on the main line, west of Altoona?

A. Yes, sir.

Q. The Hastings colliery is on the Cambria and Clearfield branch, you say?

A. Yes, sir.

Q. Where does the Cambria and Clearfield branch leave the main line?

A. At Cresson.

Q. Did you make any shipments from Hastings to Altoona?

A. Very few. We could not, on account of the rate.

Q. Did you make any shipments?

A. I suppose we did a few cars, very few.

Q. How did you get the rate; how did you know what the rate was if you did not ship?

A. I do not know. I suppose we got the rate from Mr. Searles or from the scales, or some one.

Q. What information have you now that enables you to say the rate was \$1.03?

A. That is the best information I could give.

Q. Cannot you tell us what your source of information was?

A. No, I could not.

By MR. GILFILLAN :

Q. You do not know where you got the information?

A. No; I could not say.

By MR. GOWEN :

Q. Have you ascertained what the rate was from other collieries to Altoona?

A. It was 76 cents from Columbia No. 6.

Q. Where is Columbia No. 6?

A. On the Cambria and Clearfield branch, Nantygo is the station. 55 cents from Columbia No. 4 to Bains Creek; that is on the main line.

Q. What is the distance from Altoona to Columbia No. 4?

A. About 18 miles.

Q. Have you given the distance from Altoona to Latrobe?

A. I did have that but I cannot remember it now. I think it is in the evidence.

Q. Are any of your collieries located on the main line west of Columbia No. 4?

A. No, sir.

By MR. GILFILLAN :

Q. Do you remember what the distance was from Altoona to Latrobe about, and from Altoona to Hastings? I do not think you gave it in miles.

A. I think it is 68 or 70 miles.

Q. What is that?

A. From Altoona to Latrobe.

Q. What is it from Altoona to Hastings colliery?

A. About 45 miles.

(It is agreed that the rate from Hastings colliery to Altoona during the period of the action was 98 cents a ton for coal.)

TESTIMONY CLOSED.

Adjourned until February 25, 1908, 11 a. m. for argument.

Thursday, January 21st, 1909, 3:30 p. m.

Present:

HON. THEODORE F. JENKINS, Referee.

GEORGE S. GRAHAM, Esq., and

JOSEPH GILFILLAN, Esq., for Plaintiff.

FRANCIS I. GOWEN, Esq., for Defendant.

WILLIAM A. THOMPSON, having been duly sworn,
was examined as follows:

By MR. GILFILLAN:

Q. Where do you live?

A. Cynwyd, Montgomery County, Pa.

Q. Are you employed by the Pennsylvania Railroad?

A. Yes, sir.

Q. In what department?

A. Chief Clerk, Coal Freight Department.

Q. Have you brought with you the published tariff sheets in effect by the Pennsylvania Railroad during the period of the years 1897, 1898, 1899, 1900, and 1901 as to coal and coke?

A. Yes, sir.

Q. Will you tell us in what books the published tariff rates for coal during the period of years 1897, 1898, 1899, 1900 and 1901 are contained?

A. These rates are contained in the books Nos. 30, 36, 40, 44, 49 and 50, marked Bituminous Coal East Bound on the back of the book.

Q. In these books you have just described there are the published tariff rates for coal both State and interstate during the period of the years 1897, 1898, 1899, 1900 and 1901; now will you tell us in what books are the published tariff rates for the shipments of coke

State and interstate during the period of the years 1897, 1898, 1899, 1900 and 1901?

A. These rates are contained in books Nos. 35 and 48, marked on the back, Coke, East bound.

Q. Mr. Thompson, if a statement is presented to you showing the points of shipment of the Mitchell Coal & Coke Company, both State and interstate during the period of the years 1897, 1898, 1899, 1900 and 1901, you could then give us from these books the published tariff rates to each of these points during the time the published tariff rate was in force?

A. Yes, sir.

Q. And in that way show during the entire period what was the published tariff rate to any particular point both State and interstate?

A. Yes, sir.

I certify that the foregoing is a correct transcript of the testimony taken before me.

THEODORE F. JENKINS,
Referee.

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Term, 1905. No. 4.

MITCHELL COAL & COKE COMPANY

vs.

PENNSYLVANIA RAILROAD COMPANY.

The Referee, to whom was referred the above case by the agreement of the parties, makes the following findings of fact and law.

FINDINGS OF FACT.

1. The plaintiff, the Mitchell Coal and Coke Company, is a corporation organized under the laws of the State of Pennsylvania, and was from April 1, 1897, continuously until May 1, 1901, engaged in the business of shipping bituminous coal and coke from what is known as the Clearfield region in the State of Pennsylvania to points without the State of Pennsylvania.

2. The plaintiff, the Mitchell Coal and Coke Company, owned and operated the following mines and collieries within the Clearfield region, in the Counties of Blair and Cambria, State of Pennsylvania, during the following periods:

Gallitzin Colliery, situate at Gallitzin, Cambria County, near the main line of the Pennsylvania Railroad, from April 1, 1897, to May 1, 1901.

Columbia Colliery No. 4, situate in Cambria Coun-

ty, on the Bens Creek Branch of the Pennsylvania Railroad, from April 1, 1897, to May 1, 1901.

Columbia Colliery No. 7, situate in Cambria County, on Bens Creek Branch of the Pennsylvania Railroad, from July 20, 1899, to May 1, 1901.

Bennington Colliery, situate in Blair County, near the main line of the Pennsylvania Railroad, from October 30, 1899, to May 1, 1901.

Hastings Colliery, situate on the line of the Cambria & Clearfield Railroad, a branch road of the Pennsylvania Railroad, from April, 1897, to May 1, 1901.

Columbia Colliery No. 6, situate at Nanty Glo, Cambria County, on the line of the Cambria & Clearfield Railroad, a branch of the Pennsylvania Railroad, from December 8, 1898, to May 1, 1901.

Columbia Colliery No. 8, situate in Cambria County, on the line of the South Fork Railroad, a branch of the Pennsylvania Railroad, from October 1, 1900, to May 1, 1901.

3. The defendant, the Pennsylvania Railroad Company, is a corporation organized under the laws of the State of Pennsylvania, and engaged in the business of transporting passengers and freight for hire from within the State of Pennsylvania to points without the State of Pennsylvania, and was so engaged from April 1, 1897, to May 1, 1901.

4. The Pennsylvania Railroad and its branches are the only railroads that tap the territory known as the Clearfield region, and the only railroads over which the plaintiff company could ship its coal and coke from its said collieries within the State of Pennsylvania to markets at points without the State of Pennsylvania.

5. There were shipped from the mines of the Mitchell Coal and Coke Company, over the lines of the Pennsylvania Railroad and its branches to points with-

out the State of Pennsylvania, between April 1, 1897, and May 1, 1901, 500,498 gross tons of coal, and 305,709 net tons of coke, and the freight thereon paid to the Pennsylvania Railroad Company. The shipments being in the following proportions from the various collieries:

Coal

Gallitzin,	73387 gr. tons (to Oct. 1, '99)	Coke
	93259 (from ")	61593 (to Oct. 1, '99)
Columbia #4,	131632	41496 (from ")
Columbia #6,	48053	
Columbia #7,	21866	
Bennington,	19573	10221
Hastings,	108139	192399
Columbia #8,	4589	
<hr/>		<hr/>
500498 gr. tons		305709 net tons

6. The shipments of coal and coke made from the mines of the plaintiff between April 1st, 1897, and March 14th, 1899, to points outside the State of Pennsylvania were 148,835 tons of coal and 137,946 tons of coke. Of the tonnage thus shipped 73,426 tons of coal and 19,179 tons of coke were shipped by the plaintiff and the freight on the same was paid by it, and 75,409 tons of coal and 118,767 tons of coke were sold by the plaintiff to purchasers who bought the coal and coke f. o. b. the mines.

7. The shipments of coal and coke made from the mines of the plaintiff after March 14th, 1899, (excepting those made from its Gallitzin mine between October 1st, 1899, and April 30th, 1901,) to points outside the State of Pennsylvania, aggregated 258,404 tons of coal and 126,267 tons of coke; of which 118,393 tons of coal and 3,619 tons of coke were shipped by the plaintiff and the freight on the same was paid by it, and 140,011 tons of coal and 122,648 tons of coke were sold by the plain-

tiff to purchasers who bought the coal and coke f. o. b. the mines.

8. The shipments of coal and coke made from the Gallitzin mine of the plaintiff between October 1st, 1899, and April 30th, 1901, to points outside the State of Pennsylvania aggregated 93,259 tons of coal and 41,496 tons of coke, of which 18,935 tons of coal and 5,173 tons of coke were shipped by the plaintiff and the freight on the same was paid by it, and 74,324 tons of coal and 36,323 tons of coke were sold by the plaintiff to purchasers who bought the coal and coke f. o. b. the mines.

9. The Altoona Coal and Coke Company is a corporation organized and existing under the laws of the State of Pennsylvania and owns and operates mines situate near the main line of the Pennsylvania Railroad, in the County of Cambria, and was, from April 1, 1897, to May 1, 1901, engaged in the business of shipping coal and coke from its said mines to points without the State of Pennsylvania.

10. The said Altoona Coal and Coke Company shipped from its said mines over the lines of the Pennsylvania Railroad, to points without the State of Pennsylvania, from April 1st, 1897, to May 1st, 1901, 22,221 gross tons of coal and 32,832 net tons of coke, and paid the freight thereon to the Pennsylvania Railroad Company.

11. The said Altoona Coal and Coke Company, between April 1, 1897, and May 1, 1901, produced and sold to the Columbia Coal Mining Company 18,045 gross tons of coal and 32,457 net tons of coke. The said Columbia Coal Mining Company shipped the said coal and coke over the lines of the Pennsylvania Railroad to points without the State of Pennsylvania.

12. The said Columbia Coal Mining Company is a corporation organized and existing under the laws of the State of Pennsylvania, and from April 1, 1897, to May 1, 1901, neither owned nor operated any mines but principally acted as a sales agent for coal producing companies.

13. The Glen White Coal & Lumber Company is a corporation organized under the laws of the State of Pennsylvania, and from April 1, 1897, to May 1, 1901, owned and operated mines in the County of Cambria, situate near the main line of the Pennsylvania Railroad, State of Pennsylvania, and from said mines shipped coal and coke between the dates above mentioned to points without the State of Pennsylvania.

14. The said Glen White Coal and Lumber Company shipped over the lines of the Pennsylvania Railroad, from its said mines in the State of Pennsylvania, to points without the State of Pennsylvania, between April 1, 1897, to May 1, 1901, 24,280 gross tons of coal and 59,549 net tons of coke and paid the freight thereon to the Pennsylvania Railroad Company.

15. The Latrobe Coal Company is a corporation organized under the laws of the State of Pennsylvania, and from April 1, 1897, to May 1, 1901, owned and operated mines in the County of Westmoreland, State of Pennsylvania, situate near the main line of the Pennsylvania Railroad.

16. The said Latrobe Coal Company mined and shipped from its said mines in the State of Pennsylvania, between April 1, 1897, and May 1, 1901, 46,545 gross tons of coal and 54,635 net tons of coke over the lines of the Pennsylvania Railroad, to points without the State of Pennsylvania, and paid the freight thereon to the Pennsylvania Railroad Company.

17. The said Latrobe Coal Company mined from its said mines and sold to the Columbia Coal Mining Company, between April 1, 1897, and May 1, 1901, 13,931 tons of coal and 9,356 tons of coke, which the said Columbia Coal Mining Company shipped over the lines of the Pennsylvania Railroad from the mines of the said Latrobe Coal Company, in the State of Pennsylvania, to points without the State of Pennsylvania.

18. The Millwood Coal and Lumber Company is a corporation organized under the laws of the State of Pennsylvania, and from April 1, 1897, to May 1, 1901, owned and operated mines, situate in Westmoreland County, Pennsylvania, near the main line of the Pennsylvania Railroad.

19. The said Millwood Coal and Lumber Company produced and shipped from its said mines, from April 1, 1897, to May 1, 1901, 1,605 gross tons of coal over the lines of the Pennsylvania Railroad to points without the State of Pennsylvania, and paid the freight thereon to the Pennsylvania Railroad Company.

20. The Bolivar Coal and Coke Company is a corporation organized and existing under the laws of the State of Pennsylvania, and from April 1, 1897, to May 1, 1901, owned and operated mines, situate in Westmoreland County, near the main line of the Pennsylvania Railroad Company.

21. The said Bolivar Coal and Coke Company produced and shipped from its said mines in Pennsylvania, between April 1, 1897, and May 1, 1901, 4,180 net tons of coke, over the lines of the Pennsylvania Railroad to points without the State of Pennsylvania, and paid the freight thereon to the Pennsylvania Railroad Company.

22. The said mines of the Mitchell Coal and Coke

Company, Altoona Coal and Coke Company and Glen White Coal and Lumber Company are in what is known as the Clearfield region.

23. The mines of the said Latrobe Coal Company, Millwood Coal and Coke Company and Bolivar Coal and Coke Company are in what is known as the Latrobe region, which is situate west of the Clearfield region.

24. The shipments of coal and coke made between March 1, 1899, and April 30, 1901, to points outside the State of Pennsylvania, from the mines of the Altoona Coal and Coke Company, the Glen White Coal and Lumber Company, the Millwood Coal and Coke Company, the Latrobe Coal Company and the Bolivar Coal and Coke Company, whether by the companies themselves or by purchasers f. o. b. the mines, were respectively as follows:

	Tons of Coal	Tons of Coke
Altoona Coal and Coke Company	11,059	17,083
Glen White Coal and Lumber Company	6,683	42,516
Millwood Coal and Coke Company	1,586	0
Latrobe Coal Company	28,721	37,695
Bolivar Coal and Coke Company	0	4,158

25. Of the coal shipped by the plaintiff after March 14, 1899, (excluding that shipped by it from its Gallitzin Mine between October 1, 1899, and April 30, 1901,) to points outside the State of Pennsylvania, 11,735 tons were transported by the defendant, either alone or in conjunction with other carriers, to points and in months to and in which coal was transported from the mines of the Latrobe Coal Company. The shipments thus transported from the mines of the Latrobe Coal Company aggregated 5,491 tons made up of 2,414 tons shipped by the Columbia Coal Mining Company, and

3,077 tons shipped either by the Latrobe Company itself or by purchasers of the coal from it.

The following table shows the shipments made:

Destination of Shipments Mitchell Co.'s. shipments	Amount Shipped		
	Shipments from Latrobe Company's Mines By Latrobe Co. or others		
	Tons	Tons	Tons
Ostrander, N. J.	161	**	319
South Amboy, N. J.	11473	2805	1644
Trenton, N. J.	52	**	431
Wilmington, Del.	49	272	**
	<hr/> 11735	<hr/> 3077	<hr/> 2394

Of the 11,735 tons shipped by the plaintiff 1,674 tons were shipped in months in which the defendant was engaged in transporting to the same destination the 3,077 tons above mentioned.

26. Of the coal shipped by the plaintiff from its Gallitzin mine between October 1st, 1899, and April 30th, 1901, to points outside the State of Pennsylvania, 4,423 tons were transported by the defendant to points and in months to and in which coal was transported by it from the mines of either the Altoona Coal & Coke Company, the Glen White Coal & Lumber Company or the Millwood Coal & Coke Company.

The shipments thus transported from the mines of the Altoona Coal and Coke Company aggregated 4,053 tons, from the mines of the Millwood Coal & Coke Company, 1,005 tons, and from the mines of the Glen White Coal & Lumber Company 346 tons.

The following table shows the shipments made:

DESTINATION OF SHIPMENTS	AMT. SHIPPED.			
Mitchell Co's shipments from Gallitzin Mine	Shipments from Altoona Coal & Coke Co. Mines	Shipments from Glen White Coal & Lum- ber Co. Mines	Shipments from Millwood Coal & Coke Co. Mines	
Tons	Alt'a Tons	Columbia Tons	Tons	Tons
Newark, N. J.	18	31	**	**
South Amboy, N. J.	4405	4022	346	1005
Totals,	4423	*** 4053	346	1005

Of the 4,423 tons shipped as above by the plaintiff, 62 tons were shipped in months in which the shipments were made from the Millwood Coal & Coke Company's mines, 292 tons in months in which shipments were made from the Glen White Coal & Lumber Company's mines, and the balance in months in which the shipments were made by the Columbia Coal Mining Company from the mines of the Altoona Coal & Coke Company.

27. No portion of the coke shipped by the plaintiff after March 14, 1899, (excluding that shipped by it from its Gallitzin mine between October 1, 1899, and April 30, 1901,) to points outside the State of Pennsylvania, was transported by the defendant either alone or in conjunction with other carriers to points to which in the same months coke was transported from the mines of either the Latrobe Coal Company or the Bolivar Coal & Coke Company.

28. Of the coke shipped by the plaintiff from its Gallitzin mine between October 1, 1899, and April 30, 1901, to points outside the State of Pennsylvania, 40 tons were transported by the defendant to points and in months to and in which coke was transported from

the mines of either the Altoona Coal & Coke Company or the Glen White Coal & Lumber Company.

Of the 40 tons shipped by the plaintiff, 23 tons were shipped in months in which shipments were made from the mines of the Altoona Coal & Coke Company, and 17 tons in months in which shipments were made from the mines of the Glen White Coal & Lumber Company.

The following table shows the shipments made.

DESTINATION OF SHIPMENTS	AMT. SHIPPED		
	Mitchell Company's shipments	Altoona Company's shipments	Glen White Company's shipments
Newark, N. J.	23	19	**
Vineland, N. J.	17	**	22
	—	—	—
Totals	40	19	22
	Tons	Tons	Tons

29. There was only one published tariff rate for coal shipped from all mines in the Clearfield region to any given point.

30. There was only one published tariff rate for coke shipped from all mines in the Clearfield region to any given point.

31. There was only one published tariff rate for coal shipped from all mines in the Latrobe region to any given point.

32. There was only one published tariff rate for coke shipped from all mines in the Latrobe region to any given point.

33. The Pennsylvania Railroad Company's published tariff rates per gross ton of 2240 pounds, during the years 1897, 1898, 1899, 1900, 1901, for the shipment of coal over its lines and connections, in carload lots,

from the mines of the plaintiff, to the various points outside of the State of Pennsylvania, are as follows:

	4/1 1897	4/1 1899	8/1 1899	4/1 1900	4/1 1901
Absecon, N. J.	1.75	1.60	1.60	1.95	1.95
Alpha, N. J.	1.65	1.35	1.35	1.70	1.70
		4/22/1899			
Athenia, N. J.		1.70	1.65	1.95	1.95
Allenhurst, N. J.	1.70	1.60	1.60	1.95	1.95
		5/16/1899			
Akron, Ohio		1.50			
Alloway, N. J.	1.50	1.25	1.25	1.60	1.60
		4/24/1899			
Ansonia, Conn.	2.50	2.30	2.30	2.60	2.60
Atlantic City, N. J.	1.75	1.60	1.60	1.95	1.95
Albany, N. Y.	1.80	1.55	1.55	1.85	1.85
		4/24/1899			
Ashley Falls, Mass.	2.55	2.30	2.30	2.60	2.60
Barnegat City, N. J.	2.40	2.30	2.30	2.65	2.65
Boonton, N. J.	1.85	1.70	1.70	2.05	1.90
Bayonne, N. J.	1.70	1.35	1.35	1.70	1.70
Belair, Md.	2.00	1.90	1.90	2.25	2.25
Bound Brook, N. J.	1.70	1.35	1.35	1.70	1.70
Bakersville, N. J.	1.75	1.60	1.60	1.95	1.95
		4/24/1899			
Berlin, Conn.	2.80	2.55	2.55	2.85	2.85
		5/16/1899			
Bloomville, Ohio		1.55			
Bentley, Md.	1.50	1.10	1.10	1.45	1.45
Baltimore, Md.	1.50	1.10	1.10	1.45	1.45
		4/24/1899			
Bethel, Conn.	2.55	2.30	2.30	2.60	2.60
Belleville, N. J.	1.80	1.65	1.65	2.00	2.00
Burlington, N. J.	1.60	1.30	1.30	1.65	1.65
Bressport, N. Y.	1.70	1.45	1.45	1.75	1.75
Berkshire, N. Y.	1.75	1.45	1.45	1.75	1.75
		4/24/1899			

	4/1 1897	4/1 1899		8/1 1899	4/1 1900	4/1 1901
Branchville, Conn.	2.55	2.30	2.30	2.30	2.60	2.60
Bayway, N. J.	1.70	1.35		1.35	1.70	1.70
Columbus, N. J.	1.75	1.45		1.45	1.80	1.80
Cortland, N. Y.	1.70	1.45		1.45	1.75	1.75
Clayton, N. J.	1.50	1.25		1.25	1.60	1.60
Canton, Balto.	1.50	1.10		1.10	1.45	1.45
			5/16/1899			
Converse, Ind.			1.75			
Clayton, Del.	2.00	1.75		1.75	2.10	2.10
(P. B. & W.)						
Claymont, Del.	1.50	1.10		1.10	1.45	1.45
Collingswood, N.J.	1.50	1.25		1.25	1.60	1.60
Clayville, N. J.	1.50	1.25		1.25	1.60	1.60
Calverton, Md.	1.50	1.10		1.10	1.45	1.45
Ctyler, N. Y.	1.70	1.45		1.45	1.80	1.80
			6/26/1899			
Chesterdon, Md.			2.00	2.00	2.35	2.35
Cuyler, N. Y.	1.70	1.45		1.45	1.80	1.80
Charlottesville, N.J.	2.10	2.10		2.10	2.45	2.30
Camden, N. J.	1.50	1.10		1.10	1.45	1.45
			5/16/1899			
Chicago, Ill.			1.75			
			5/16/1899			
Cleveland, Ohio			1.50			
Carlton Hill, N. J.	1.80	1.65		1.65	2.00	2.00
			5/16/1899			
Cairo, Ill.			3.25			
Constable Hook, N. J.	1.70	1.35		1.35	1.70	1.70
Carteret, N. J.	1.70	1.35		1.35	1.70	1.70
Cliffwood, N. J.	1.70	1.60		1.60	1.95	1.95
Carlstadt, N. J.	1.80	1.65		1.65	2.00	2.00
			4/24/1899			
Conway, Mass.	2.90	2.60	2.60	2.60	2.90	2.90
Canestota, N. Y.	1.70	1.45		1.45	1.80	1.80

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	4/1 1897	4/1 1899	8/1 1899	4/1 1900	4/1 1901
Canandaigua, N.Y.	1.65	1.40	1.40	1.70	1.70
	4/24/1899				
Cromwell, Conn.	2.90	2.65	2.65	2.95	2.95
Chatham, N. Y.	3.85	3.35	3.10	3.40	3.40
Cedar Grove, N. J.	2.20	1.75	1.75	2.10	2.10
	4/24/1899				
Canan, Conn.	2.55	2.30	2.30	2.60	2.60
Delair, N. J.	1.50	1.10	1.10	1.45	1.45
Delmar, Del.	2.30	2.30	2.30	2.65	2.65
	4/24/1899				
Danbury, Conn.	2.55	2.30	2.30	2.60	2.60
	4/25/1899				
Dover, N. J.	1.75	1.75	1.70	1.75	2.05
	5/16/1899				
Dayton, Ohio			1.55		
	5/16/1899				
Dennison, Ohio			1.50		
	5/16/1899				
Detroit, Mich.			1.75		
DeRuyter, N. Y.	1.70	1.45	1.45	1.80	1.80
Delair, N. J.	1.50	1.10	1.10	1.45	1.45
Dundee, N. J.	1.80	1.65	1.65	2.00	2.00
	4/22/1899				
Delawanna, N. J.	1.85	1.70	1.65	1.65	2.00
Dryden, N. Y.	1.75	1.45	1.45	1.75	1.75
	5/16/1899				
Dubuque, Ia.			2.65		
Daretown, N. J.	1.50	1.25	1.25	1.60	1.60
Denton, Md.	2.30	2.30	2.30	2.65	2.65
Edison, N. J.	2.00	2.00	2.00	2.35	2.20
Elizabeth, N. J.	1.70	1.35	1.35	1.70	1.70
Elmira, N. Y.	1.30	1.10	1.10	1.40	1.40
Elkton, Md.	1.50	1.10	1.10	1.45	1.45
East Homer, N. Y.	1.70	1.45	1.45	1.75	1.75
Elm Park, L. I.	1.90	1.10	1.10	1.45	1.45
Edgemoor, Del.	1.50	1.10	1.10	1.45	1.45

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	4/1 1897	4/1 1899	8/1 1899	4/1 1900	4/1 1901
Elizabethport, N. J.	1.70	1.35	1.35	1.70	1.70
Elmer, N. J.	1.50	1.25	1.25	1.60	1.60
Egg Harbor, N. J.	1.75	1.60	1.60	1.95	1.95
	4/24/1899				
East Danbury, Conn.	2.55	2.30	2.30	2.30	2.60
	4/24/1899				
East Hampton, Mass.	2.90	2.60	2.60	2.60	2.90
Ennerdale, N. Y.	1.65	1.40	1.40	1.70	1.70
	5/16/1899				
East Chicago, Ind.			1.75		
	5/16/1899				
East St. Louis, Ill.			2.25		
Fredericksb'g, Va.	1.90	1.90	1.90	2.25	2.25
Frenchtown, N. J.	1.65	1.35	1.35	1.70	1.70
Flemington, N. J.	1.70	1.50	1.50	1.85	1.85
Frederick, Md.	1.50	1.25	1.25	1.60	1.60
	4/24/1899				
Fort Runyan, Va.	1.50	1.25	1.10	1.10	1.45
	5/16/1899				
Fort Wayne, Ind.			1.75		
	4/19/1899				
Farmingdale, L. I.			2.15	2.15	2.50
	4/24/1899				
Farmington, Conn.	2.85	2.55	2.55	2.55	2.85
Freehold, N. J.	1.70	1.60	1.60	1.95	1.95
	5/28/1900				
Fulton, N. Y.			1.85		1.85
	5/8/1900				
Fall River, Mass.			4.20		4.20
Glassboro, N. J.	1.50	1.25	1.25	1.60	1.60
	4/24/1899				
Great Barrington, Mass.	2.55	2.30	2.30	2.30	2.60
	5/16/1899				

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	4/1 1897	4/1 1899	8/1 1899	4/1 1900	4/1 1901
Great Meadow, N. J.			1.70	1.70	2.00
			5/16/1899		1.90
Grand Rapids, Mich.			2.00		
Green Island, N. Y.	1.80				
			5/16/1899		
Galvestin, Ind.			1.75		
			4/24/1899		
Georgetown, Conn.	2.55	2.30	2.30	2.30	2.60
			5/16/1899		2.60
Goshen, Ind.			2.25		
Groton, N. Y.	1.75	1.45	1.45	1.75	1.75
			4/24/1899		
Greenfield, Mass.	3.00	2.70	2.70	2.70	3.00
Grassmere, N. Y.	2.05	1.60	1.60	1.85	1.85
Geneva, N. Y.	1.65	1.40	1.40	1.70	1.70
Granville, N. Y.	3.10	2.85	2.85	2.90	2.90
Garwood, N. J.	1.70	1.35	1.35	1.70	1.70
Hurd, N. J.	2.00	2.00	2.00	2.35	2.20
Holland, N. J.	1.65	1.35	1.35	1.70	1.70
Hagerstown, Md.	1.50	1.25	1.25	1.45	1.45
Highstown, N. J.	1.70	1.35	1.35	1.70	1.70
			4/24/1899		
Hausotonic, Mass.	2.55	2.30	2.30	2.30	2.60
			4/24/1899		2.60
Holyoke, Mass.	2.85	2.55	2.55	2.85	2.60
Herckimer, N. Y.	1.75	1.50	1.50	1.80	2.85
Hinckley, N. Y.	2.55				1.80
Horseheads, N. Y.	1.30	1.10	1.10	1.40	1.40
Hibernia, N. J.	2.00	2.00	2.00	2.35	2.20
Howes Cave, N. Y.	1.80	1.55	1.55	1.85	1.85
Hammonton, N. J.	1.75	1.60	1.60	1.95	1.95
Harrison, N. J.	1.70	1.35	1.35	1.70	1.70
Hocokus, N. J.	1.80	1.80	1.80	2.15	2.15
Hudson, N. Y.	2.10	1.85	1.85	2.15	2.15
Hackensack, N. J.	1.80	1.65	1.65	2.00	2.00
			5/16/1899		
Indianapolis, Ind.			1.75		

	4/1 1897	4/1 1899	8/1 1899	4/1 1900	4/1 1901
Ithaca, N. Y.	1.75	1.45	1.45	1.75	1.75
Jersey City, N. J.	1.70	1.35	1.35	1.70	1.70
Jones Point, N. Y.	2.36	2.05	2.05	2.40	2.40
Kent, N. J.	1.65	1.35	1.35	1.70	1.70
	5/16/1899				
Kankakee, Ill.			2.15		
Keasby, N. J.	1.70	1.35	1.35	1.70	1.70
	4/25/1899				
Kenville, N. J.	1.75	1.75	1.70	2.05	1.90
Lodi, N. J.	2.05	1.75	1.75	2.10	2.10
	5/16/1899				
Logansport, Ind.			1.75		
Little Falls, N. Y.	1.70	1.50	1.50	1.80	1.80
	5/16/1899				
Louisville, Ky.			2.25		
	5/16/1899				
Lima, Ohio			1.75		
	4/24/1899				
Lee, Mass.	2.55	2.30	2.30	2.30	2.60
	5/16/1899				
London, Ohio			1.55		
Linden, N. J.	1.70	1.35	1.35	1.70	1.70
Milford, N. J.	1.65	1.35	1.35	1.70	1.70
Medford, N. J.	1.70	1.50	1.50	1.85	1.85
Middlesex, N. Y.	1.90	1.65	1.65	1.95	1.95
Moravia, N. Y.	1.75	1.45	1.45	1.75	1.75
Maurer, N. J.	1.70	1.35	1.35	1.70	1.70
Millville, N. J.	1.50	1.25	1.25	1.60	1.60
Mechanicsville, N. Y.	1.80	1.55	1.55	1.85	1.85
Menlo Park, N. J.	1.70	1.35	1.35	1.70	1.70
	5/16/1899				
Michigan City, Ind.			2.25		
	4/24/1899				
Middleton, Conn.	2.80	2.55	2.55	2.55	2.85

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	4/1 1897	4/1 1899	8/1 1899	4/1 1900	4/1 1901
Montrose, N. Y.	2.45	1.95	1.95	2.20	2.20
		4/24/1899			
Milldale, Conn.	2.85	2.55	2.55	2.85	2.85
		5/16/1899			
Mansfield, Ohio		1.55			
Mays Landing, N. J.	1.50	1.25	1.25	1.60	1.60
Matawan, N. J.	1.70	1.60	1.60	1.95	1.95
		4/24/1899			
Millbury, Mass.	3.05	2.80	2.80	3.10	3.10
		4/24/1899			
Mamoroneck, N. Y.	2.35	2.10	1.90	2.20	2.20
Meadows, N. J.	1.70	1.35	1.35	1.70	1.70
(PRR)					
		5/16/1899			
Mayville, Mich.		2.25			
Newark, N. J.	1.70	1.35	1.35	1.70	1.70
North East, Md.	1.50	1.10	1.10	1.45	1.45
North Leroy, N. Y.			1.50	1.80	1.80
New Brunswick, N. J.	1.70	1.35	1.35	1.70	1.70
		4/24/1899			
New Britain, Conn.	2.80	2.55	2.55	2.85	2.85
		4/24/1899			
New Milford, Conn.	2.55	2.30	2.30	2.60	2.60
Newburg, N. Y.	1.80	1.55	1.55	1.85	1.85
		4/24/1899			
Noroton, Conn.	2.40	2.15	2.10	2.40	2.40
New Durham, N. J.	1.65	1.65	1.65	2.00	2.00
Naepera Park, N. Y.			1.90	2.20	2.20
		4/24/1899			
New Hartford, Conn.	2.85	2.55	2.55	2.85	2.85
		4/24/1899			
New Haven, Conn.	2.40	2.15	2.05	2.35	2.35
		4/24/1899			
New Rochelle, N. Y.	2.35	2.10	1.90	1.90	2.20
		5/16/1899			
Noblesville, Ind.		2.50			

	4/1 1897	4/1 1899	8/1 1899	4/1 1900	4/1 1901
Ostander, N. J.		1.35	1.35	1.70	1.70
Oakland, N. J.	2.23	1.85	1.85	2.20	2.20
			4/1/1899		
Orange, N. J.	2.15	1.80	1.65	2.00	2.00
Ocean City, N. J.	1.75	1.60	1.60	1.95	1.95
Oneonto, N. Y.	1.80	1.55	1.55	1.85	1.85
Ovid, N. Y.	1.75	1.45	1.45	1.75	1.75
Poughkeepsie, N. Y.	2.10	1.85	1.85	2.15	2.15
Plattsburg, N. Y.	3.46	3.21	3.21	3.26	3.26
Passaic, N. J.	1.80	1.65	1.65	2.00	2.00
			4/25/1899		
Port Oram, N. J.	1.75	1.75	1.70	2.05	1.90
Palmyra, N. J.	1.60	1.30	1.30	1.65	1.65
			4/24/1899		
Pittsfield, Mass.	2.55	2.30	2.30	2.60	2.60
Perth Amboy, N. J.	1.70	1.35	1.35	1.70	1.70
Penns Grove, N. J.	1.50	1.25	1.25	1.60	1.60
Paterson, N. J.	1.80	1.65	1.65	2.00	2.00
Plainfield, N. J.	1.70	1.35	1.35	1.70	1.70
			4/24/1899		
Pelham Manor, N. Y.	2.30	2.05	1.90	2.20	2.20
			5/16/1899		
Pontiac, Mich.			2.30		
			5/16/1899		
Prospect, Ohio			2.00		
Phillipsburg, N. J.	1.65	1.35	1.35	1.70	1.70
Port Henry, N. Y.	3.06	2.81	2.81	2.86	2.86
Prompton, N. J.	2.23	1.85	1.85	2.20	2.20
Penn Yan, N. Y.	1.55	1.40	1.40	1.65	1.65
			4/24/1899		
Pawtucket, R. I.	3.05	2.80	2.80	3.10	3.10
Peekskill, N. Y.	2.45	1.95	1.95	2.20	2.20
			5/16/1899		
Port Huron, Mich.			2.25		
			5/16/1899		

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	4/1 1897	4/1 1899	8/1 1899	4/1 1900	4/1 1901
Poneto, Ind.			2.25 5/16/1899		
Peoria, Ill.			2.25 4/24/1899		
Rosslyn, Va.	1.50	1.25	1.10	1.10	1.45
Rahway, N. J.	1.70	1.35		1.35	1.70
Rocky Hill, N. J.	1.90	1.55		1.55	1.90
			4/25/1899		
Rockaway N. J.	1.75	1.75	1.70	1.70	2.05
			4/19/1899		
Rosslyn, L. I.			1.90	1.90	2.25
Rochester, N. Y.	1.65	1.40		1.40	1.70
Rome, N. Y.	1.75	1.50		1.50	1.80
Stanhope, N. J.	1.85	1.70		1.70	2.05
Skaneateles Jc., N. Y.	1.65	1.65		1.65	1.70
Spring Valley, N. Y.		2.00		2.00	2.35
Slatsburg, N. Y.	1.80	1.80		1.80	2.15
			5/16/1899		
Springfield, Ohio			1.55		
Selbyville, Del.	2.30	2.30		2.30	2.65
South Amboy, N. J.	1.70	1.35		1.35	1.70
Sparrow Pt., Md.	1.50	1.10		1.10	1.45
			4/24/1899		
So. River, N. J.		1.60	1.35	1.35	1.70
Seaside Park, N. J.	1.70	1.60		1.60	1.95
Syracuse, N. Y.	1.65	1.40		1.40	1.70
Seneca Falls, N. Y.	1.65	1.40		1.40	1.70
Salem, N. J.	1.50	1.25		1.25	1.60
Sherwood, Md.	1.50	1.10		1.10	1.45
Sodus Point, N. Y.	1.65	1.40		1.40	1.70
			4/24/1899		
South Lee, Mass.	2.55	2.30	2.30	2.30	2.60
			6/26/1899		
Smyrna, Del.	2.00	1.75	1.50	1.50	1.85
So. Camden, N. J.	1.50	1.10		1.10	1.45
			4/24/1899		

	4/1 1897	4/1 1899	8/1 1899	4/1 1900	4/1 1901
Seymour, Conn.	2.55	2.30	2.30	2.30	2.60
Schenectady, N. Y.	1.80	1.55	1.55	1.85	1.85
			4/24/1899		
Springfield, Mass.	2.80	2.55	2.55	2.55	2.85
			5/16/1899		
Streaton, Ill.			2.35		
Somerville, N. J.	1.70	1.35	1.35	1.70	1.70
Spuyten Duyvil, N. Y.	2.35	1.85	1.85	2.15	2.15
			4/24/1899		
Sheffield, Mass.	2.55	2.30	2.30	2.30	2.60
Springfield, Md.	1.50	1.10	1.10	1.45	1.45
			4/24/1899		
Still River, Conn.	2.55	2.30	2.30	2.30	2.60
			4/24/1899		
Sheldon, Conn.	2.55	2.30	2.30	2.30	2.60
Saratoga, N. Y.	2.55	2.30	2.30	2.35	2.35
Texas, Md.	1.50	1.10	1.10	1.45	1.45
Trenton, N. J.	1.60	1.30	1.30	1.65	1.65
			5/16/1899		
Tiffin, Ohio			1.55		
Troy, N. Y.	1.80	1.55	1.55	1.85	1.85
			5/16/1899		
Terre Haute, Ind.			2.25		
Tuckerton, N. J.	2.00	2.00	2.00	2.35	2.35
Utica, N. Y.	1.75	1.50	1.50	1.80	1.80
Vulcanite, N. J.	1.65	1.35	1.35	1.70	1.70
			5/16/1899		
Valparaiso, Ind.			1.75		
Waverly, N. Y.	1.70	1.45	1.45	1.75	1.75
White Plains, N.Y.	3.05	2.55	2.35	2.65	2.65
			5/16/1899		
Watseka, Ill.			2.25		
			5/16/1897		
Whitneys Point, N. Y.	1.75	1.75	1.45	1.45	1.75

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	4/1 1897	4/1 1899	8/1 1899	4/1 1900	4/1 1901
Wilmington, Del.	1.50	1.10	1.10	1.45	1.45
PB&W					
Washington, D. C.	1.50	1.10	1.10	1.45	1.45
Winslow, Jr., N. J.	1.50	1.25	1.25	1.60	1.60
			6/21/1899		
Wells, N. Y. (ERR)			1.10	1.40	1.40
Wilmington, Del.	1.50	1.10	1.10	1.45	1.45
			4/24/1899		
Waterloo, Va.	1.50	1.25	1.10	1.45	1.45
			4/24/1899		
West Stockbridge Mass.	2.25	2.30	2.30	2.60	2.60
			5/16/1899		
Wellsville, Ohio			1.40		
West Albany Local, N. Y.	1.80	1.55	1.55	1.85	1.85
West Albany Tran. N. Y.	1.80	1.55	1.55	1.85	1.85
Watkins, N. Y.	1.55	1.30	1.30	1.60	1.60
			4/24/1899		
Worcester, Mass.	3.05	2.80	2.80	2.80	2.80
WestSideAve., N.J.	1.70	1.35	1.35	1.70	1.70
Williamsbridge, N. Y.	2.65	2.15	2.00	2.30	2.30
			4/24/1899		
Waterbury, Conn.	2.55	2.30	2.30	2.60	2.60
Woodstown, N. J.	1.50	1.25	1.25	1.60	1.60
Waverly, N. J.	1.70	1.35	1.35	1.70	1.70
			4/24/1899		
Winsted, Conn.	2.70	2.45	2.45	2.75	2.75
			4/24/1899		
Westfield, Mass.	2.85	2.85	2.55	2.85	2.85
Wanaque, N. J.	2.40	1.85	1.85	2.20	2.20
Waterloo, N. Y.	1.65	1.40	1.40	1.70	1.70
West Pawlet, Vt.		2.85	2.85	2.90	2.90
			5/16/1899		

	4/1 1897	4/1 1899	8/1 1899	4/1 1900	4/1 1901
Wayland, Mich.			2.00		
Warners, N. Y.	1.65	1.40	1.40	1.70	1.70
			5/16/1899		
Yale, Mich.			2.25		
			5/16/1899		
Youngstown, Ohio			1.40		

34. The Pennsylvania Railroad Company's published tariff rate per net ton of 2,000 pounds, during the years 1897, 1898, 1899, 1900, 1901 for the shipment of coke over its lines and connections, in carload lots, from the mines of the plaintiff, to the various points outside of the State of Pennsylvania, are as follows; the rate to any point mentioned being set opposite the name of the destination and the year in which said rate was effective is designated at the top of the column in which the figures of said rate are found.

	4/1 1897	4/1 1899	10/2 1900	1/1 1900	1/1 1901	1/17 1901
Ansonia, Conn.	3.10	3.10	3.10	3.10	3.10	3.10
Albany, N. Y.	2.35	2.35	2.35	2.35	2.35	2.35
Arlington, N. J.	2.04	2.04	1.75	2.05	1.75	1.75
Auburn, N. Y.	2.05	2.05	2.05	2.05	2.05	2.05
Ballston, N. Y.	2.60	2.60	2.60	2.60	2.60	2.60
Bayway, N. J.	2.04	2.04	1.75	2.05	2.05	2.05
Batavia, N. Y.	1.90	1.90	1.90	1.90	1.90	1.90
						7/1/1900
Bartley, N. J.	2.04	2.04	1.75	2.05	1.95	1.95
Bayonne, N. J.	2.04	2.04	1.75	2.05	2.05	2.05
Bellows Falls, Vt.	3.10	3.10	3.10	3.10	3.10	3.10
Bellville, N. J.	2.04	2.04	1.75	2.05	1.75	1.75
Binghampton, N. Y.	2.31	2.31	2.31	2.31	2.31	2.31
Bloomfield, N. J.	2.09	2.09	2.09	2.39	2.09	2.09
Boston, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Boonton, N. J.	2.04	2.04	1.75	2.05	1.75	1.75

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	4/1 1897	4/1 1899	10/2 1900	1/1 1900	1/1 1901	1/17 1901
Bridgeport, Conn.	3.10	3.10	3.10	3.10	3.10	3.10
Brightwood, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Bristol, Conn.	3.10	3.10	3.10	3.10	3.10	3.10
Bridgewater, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Bridgeton, N. J.	1.83	1.75	1.75	2.05	1.75	1.75
Breaker Island, N.Y.	2.35	2.35	2.35	2.35	2.35	2.35
Bridgewater, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Bristol, Conn.	3.10	3.10	3.10	3.10	3.10	3.10
Brooklyn, N. Y.	2.54	2.25	2.25	2.55	2.25	2.25
Burlington, N. J.	1.83	1.60	1.60	1.90	1.60	1.60
Canton, Balto., Md.	1.55	1.55	1.55	1.85	1.55	1.55
Camden, N. J.	1.83	1.60	1.60	1.90	1.60	1.60
Carteret, N. J.	2.04	2.04	1.75	2.05	2.05	2.05
Central Falls, R. I.	3.10	3.10	3.10	3.10	3.10	3.10
Caxsaxie, N. Y.	2.54	2.54	2.54	2.54	2.54	2.54
Chicopee, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Chicopee Falls, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Clifton, N. J.	2.04	2.04	1.75	1.75	2.05	1.75
5/22/1900						
Cold Springs, N. Y.	2.54	2.54	2.54	2.55	2.55	2.55
Cohoes, N. Y.	2.35	2.35	2.35	2.35	2.35	2.35
Constable Hook, N.J.	2.04	2.04	1.75	2.05	2.05	2.05
Danbury, Conn.	3.10	3.10	3.10	3.10	3.10	3.10
Dundalk, Md.	1.55	1.55	1.55	1.85	1.55	1.55
Elizabeth, N. J.	2.04	1.75	1.75	2.05	1.75	1.75
Elmira, N. Y.	1.51	1.51	1.51	1.70	1.50	1.50
Elizabethport, N. J.	2.04	2.04	1.75	2.05	2.05	2.05
Elkton, Md.	1.75	1.55	1.55	1.85	1.55	1.55
Fall River, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Fairton, N. J.	1.83	1.83	1.75	2.05	2.05	2.05
Fairhaven, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Flemington, N. J.	1.83	1.65	1.75	2.05	1.75	1.75
Florence, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Florence, N. J.	1.83	1.60	1.60	1.90	1.60	1.60
Fitchburg, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Foxboro, Mass.	3.10	3.10	3.10	3.10	3.10	3.10

	4/1 1897	4/1 1899	10/2 1900	1/1 1900	1/1 1901	1/17 1901
Gardner, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
	9/24/1900					
Geneva, N. Y.	2.05	2.05	2.05	2.05	1.90	1.90
Gloucester, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Gorton, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Hackensack, N. J.	2.04	2.04	1.75	2.05	1.75	1.75
	7/1/1900					
Hackettstown, N. J.	2.04	2.04	1.75	2.05	1.95	1.60
Hagerstown, Md.	1.55	1.55	1.55	1.85	1.55	1.55
Hartford, Conn.	3.10	3.10	3.10	3.10	3.10	3.10
Harrison, N. J.	2.04	1.75	1.75	2.05	1.75	1.75
Hainesport, N. J.	1.83	1.75	1.75	2.05	1.75	1.75
	7/1/1900					
High Bridge, N. J.	1.83	1.83	1.75	2.05	1.95	1.95
Hoboken, N. J.	2.04	2.04	1.75	2.05	1.75	1.75
Hoosic Falls, N. Y.	3.00	3.00	3.00	3.00	3.00	3.00
Holyoke, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Howes Cave, N. Y.	2.35	2.35	2.35	2.35	2.35	2.35
Hyde Park, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Indian Orchard, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
	5/22/1900					
Irvington, N. Y.	2.54	2.54	2.54	2.54	2.55	2.55
Jersey City, N. J.	2.04	1.75	1.75	2.05	1.75	1.75
	7/1/1900					
Kent, N. J.	1.83	1.60	1.60	1.60	1.85	1.60
Keene, N. Y.	3.10	3.10	3.10	3.10	3.10	3.10
Lawrence, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
	7/1/1900					
Lambertville, N. J.	1.83	1.60	1.60	1.90	1.85	1.60
Lee, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Lowell, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Lockport, N. Y.	1.90	1.90	1.90	1.90	1.90	1.90
Long Island City, N. Y.	2.54	2.25	2.25	2.55	2.25	2.25
Lynn, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
	9/24/1900					

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	4/1 1897	4/1 1899	10/2 1900	1/1 1900		1/1 1901	1/17 1901
Macedon, N. Y.	2.05	2.05	2.05	2.05	1.90	1.90	1.90
Manchester, N. H.	3.10	3.10	3.10	3.10		3.10	3.10
Marlboro, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
Marathon, N. Y.	2.60	2.31	2.31	2.31		2.31	2.31
Meadows, N. J.	2.04	1.75	1.75	2.05		1.75	1.75
Mechanicsville, N.Y.	2.35	2.35	2.35	2.35		2.35	2.35
Meriden, Conn.	3.10	3.10	3.10	3.10		3.10	3.10
Merchantville, N. J.	1.83	1.75	1.75	2.05		1.75	1.75
Middleborough, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
Millers Falls, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
Millville, N. J.	1.83	1.75	1.75	2.05		1.75	1.75
Mt. Holly, N. J.	1.83	1.75	1.75	2.05		1.75	1.75
Montreal, Can.	4.10	4.10	4.10	4.10		4.10	4.10
Mystic, Conn.	3.10	3.10	3.10	3.10		3.10	3.10
New Britain, Conn.	3.10	3.10	3.10	3.10		3.10	3.10
New Haven, Conn.	3.10	3.10	3.10	3.10		3.10	3.10
Newark, N. J.	2.04	1.75	1.75	2.05		1.75	1.75
New Brunswick,N.J.	2.04	1.75	1.75	2.05		1.75	1.75
New Bedford,Mass.	3.10	3.10	3.10	3.10		3.10	3.10
Newton UpperFalls, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
Norwood, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
Orange, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
Oxford Furnace, N.J.	2.04	2.04	1.75	2.05	7/1/1900	1.95	1.60 1.60
Passaic, N. J.	2.04	2.04	1.75	2.05			1.75 1.75
Pawtucket, R. I.	3.10	3.10	3.10	3.10			3.10 3.10
Plainfield, Conn.	3.10	3.10	3.10	3.10			3.10 3.10
Port Oram, N. J.	2.04	2.04	1.75	2.05	7/1/1900	1.95	1.60 1.60
Perth Amboy, N. J.	2.04	1.75	1.75	2.05			1.75 1.75
Peekskill, N. Y.	2.54	2.54	2.54	2.54	5/22/1900	2.55	2.55 2.55
Peabody, Mass.	3.10	3.10	3.10	3.10			3.10 3.10
					7/1/1900		

	4/1 1897	4/1 1899	10/2 1900	1/1 1900	1/1 1901	1/17 1901
Phillipsburg, N. J.	1.83	1.60	1.60	1.90	1.85	1.60 1.60
Plymouth, Mass.	3.10	3.10	3.10	3.10		3.10 3.10
Plainfield, Conn.	3.10	3.10	3.10	3.10		3.10 3.10
Poughkeepsie, N.Y.	2.54	2.54	2.54	2.54		2.54 2.54
Portland, Me.	3.10	3.10	3.10	3.10		3.10 3.10
Portchester, N. Y.	3.10	3.10	3.10	3.10		3.10 3.10
Port Jervis, N. Y.	2.34	2.34	2.34	2.64		2.34 2.34
7/1/1900						
Port Oram, N. J.	2.04	2.04	1.75	2.05	1.95	1.60 1.60
Providence, R. I.	3.10	3.10	3.10	3.10		3.10 3.10
Rutland, Vt.	3.10	3.10	3.10	3.10		3.10 3.10
Rahway, N. J.	2.04	1.75	1.75	2.05		1.75 1.75
Riverpoint, R. I.	3.10	3.10	3.10	3.10		3.10 3.10
Rockport, Mass.	3.10	3.10	3.10	3.10		3.10 3.10
7/1/1900						
Rockaway, N. J.	2.04	2.04	1.75	2.05	1.95	1.95 1.95
Rochester, N. Y.	1.90	1.90	1.90	1.90		1.90 1.90
Rome, N. Y.	2.35	2.35	2.35	2.35		2.35 2.35
Rutland, Vt.	3.10	3.10	3.10	3.10		3.10 3.10
Salmon Falls, N. H.	3.10	3.10	3.10	3.10		3.10 3.10
Salem, N. J.	1.83	1.75	1.75	2.05		1.75 1.75
4/23/1900						
Sayreville, N. J.					2.05	1.75 1.75
Salem, Mass.	3.10	3.10	3.10	3.10		3.10 3.10
Saco, Me.	3.10	3.10	3.10	3.10		3.10 3.10
Schenectady, N. Y.	2.35	2.35	2.35	2.35		2.35 2.35
Seaside, Mass.	3.10	3.10	3.10	3.10		3.10 3.10
Seneca Falls, N. Y.	2.05	2.05	2.05	2.05		2.05 2.05
Selton, Conn.	3.10	3.10	3.10	3.10		3.10 3.10
5/22/1900						
Sing Sing, N. Y.	2.54	2.54	2.54	2.54	2.55	2.55 2.55
Smithville, N. J.	2.04	1.95	1.95	2.25		1.95 1.95
So. Wareham, Mass.	3.10	3.10	3.10	3.10		3.10 3.10
4/23/1900						
So River, N. J.					2.05	1.75 1.75
So. Norwalk, Conn.	3.10	3.10	3.10	3.10		3.10 3.10

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	4/1 1897	4/1 1899	10/2 1900	1/1 1900	1/1 1901	1/17 1901
So. Amboy, N. J.	2.04	1.75	1.75	2.05	1.75	1.75
Somerset, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
So. Framingham, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Somerville, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Springfield, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
7/1/1900						
Stanhope, N. J.	2.04	2.04	1.75	2.05	1.95	1.60 1.60
Stamford, Conn.	3.10	3.10	3.10	3.10	3.10	3.10
Stonington, Conn.	3.10	3.10	3.10	3.10	3.10	3.10
Syracuse, N. Y.	2.05	2.05	2.05	2.05	2.05	2.05
Taunton, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Tremont, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Trenton, N. J.	1.83	1.60	1.60	1.90	1.85	1.60 1.60
Torrington, Conn.	3.10	3.10	3.10	3.10	3.10	3.10
Troy, N. Y.	2.35	2.35	2.35	2.35	2.35	2.35
11/21/1900						
Tottenville, N. Y.					2.25	2.25 2.25
Union Market, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Vineland, N. J.	1.83	1.75	1.75	2.05	1.75	1.75
Wallingford, Conn.	3.10	3.10	3.10	3.10	3.10	3.10
Wakefield, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Waltham, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Waterbury, Conn.	3.10	3.10	3.10	3.10	3.10	3.10
Washington, D. C.	1.55	1.55	1.55	1.55	1.55	1.55
Warren, R. I.	3.10	3.10	3.10	3.10	3.10	3.10
Watertown, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Weehawken, N. J.	2.04	2.04	2.04	2.04	2.04	2.04
Westbrook, Me.	3.10	3.10	3.10	3.10	3.10	3.10
Wilmington, Del.	1.75	1.55	1.55	1.85	1.55	1.55
Willimantic, Conn.	3.10	3.10	3.10	3.10	3.10	3.10
Worcester, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Woonsocket, R. I.	3.10	3.10	3.10	3.10	3.10	3.10
5/22/1900						
Yonkers, N. Y.	2.54	2.54	2.54		2.55	2.55 2.55

35. From April 1st, 1897, to April 1st, 1899, the freight rates on coal shipped from the Latrobe region were 15 cents per gross ton higher than upon coal shipped from the Clearfield region to the same general eastern markets without the State of Pennsylvania.

36. From April 1, 1897, to May 1, 1901, the freight rates from the Latrobe region to eastern markets without the State of Pennsylvania, on coke were 20 cents per net ton higher than the rates from the Clearfield region on coke to the same eastern markets without the State of Pennsylvania.

37. From April 1, 1899, to May 1, 1901, the freight rates on coal from the Clearfield and Latrobe regions in the State of Pennsylvania, to the same eastern markets without the State of Pennsylvania were the same.

38. Upon all shipments of coal and coke from the Clearfield and Latrobe regions, over the lines of the Pennsylvania Railroad and its branches, to points without the State of Pennsylvania, from April 1, 1897, to April 1, 1899, the Pennsylvania Railroad Company furnished to any shipper making application therefor, a net rate, which was less than the open published tariff rate to the point to which such shipments were to be made, except that from April 1, 1897, to March 14, 1899, the Mitchell Coal and Coke Company shipped at the published tariff rates 22,028 tons of coal and 5,754 tons of coke, and from March 14, 1899, to April 1, 1899, 915 tons of coal and 340 tons of coke.

39. From April 1, 1897, to April 1, 1899, the Altoona Coal and Coke Company, the Glen White Coal and Lumber Company, the Latrobe Coal Company, the Millwood Coal and Lumber Company, and the Bolivar Coal and Coke Company obtained from the Pennsylvania Railroad Company rates for all their shipments of coal and coke to points without the State of Pennsylvania.

nia to which the Mitchell Coal and Coke Company obtained like rates for shipments made by it, which rates were less than the published tariff rates, and the difference the Pennsylvania Railroad Company paid to the company making the shipment.

40. The Mitchell Coal and Coke Company had, from April 1, 1897, to May 1, 1901, a siding or branch railroad running from the main line of the Pennsylvania Railroad at Gallitzin, Pennsylvania, to the Gallitzin colliery, a distance of about one mile, over which empty cars were drawn from the Pennsylvania Railroad tracks to the Gallitzin colliery, and loaded cars of coal and coke were drawn from the Gallitzin colliery to the main line of the Pennsylvania Railroad.

41. The Mitchell Coal and Coke Company had from April 1, 1897, to May 1, 1901, a siding or branch railroad running from the Bens Creek branch of the main line of the Pennsylvania Railroad, near Bens Creek Junction, Pennsylvania, to the Columbia Colliery No. 4, a distance of 1,144 feet, over which empty cars were drawn from the Bens Creek branch of the Pennsylvania Railroad tracks to the Columbia Colliery No. 4, and loaded cars of coal and coke were drawn from the Columbia Colliery No. 4 to the Bens Creek branch of the main line of the Pennsylvania Railroad.

42. The Mitchell Coal and Coke Company had, from December 8, 1898, to May 1, 1901, a siding or branch railroad running from the Cambria and Clearfield branch of the Pennsylvania Railroad, near Nanty Glo to the Columbia Colliery No. 6, a distance of 2,725 feet, over which empty cars were drawn from the Cambria and Clearfield branch of the Pennsylvania Railroad tracks to the Columbia Colliery No. 6 and loaded cars of coal and coke were drawn from the Columbia Colliery No. 6 to the Cambria and Clearfield branch of the Pennsylvania Railroad.

43. The Mitchell Coal and Coke Company had, from July 20, 1899, to May 1, 1901, a siding or branch railroad running from the Bens Creek branch of the main line of the Pennsylvania Railroad, near Bens Creek Junction, to the Columbia Colliery No. 7, a distance of 1,406 feet, over which empty cars were drawn from the Bens Creek branch of the Pennsylvania Railroad tracks to the Columbia Colliery No. 7, and loaded cars of coal and coke were drawn from the Columbia Colliery No. 7 to the Bens Creek branch of the main line of the Pennsylvania Railroad.

44. The Mitchell Coal and Coke Company from October 1, 1900, to May 1, 1901, had a siding or branch railroad from the South Fork Railroad, a branch of the Pennsylvania Railroad, to Columbia Colliery No. 8, a distance of 1,575 feet over which empty cars were drawn from the South Fork Railroad, a branch of the Pennsylvania Railroad, to said Columbia Colliery No. 8, and loaded cars of coal and coke were drawn from the Columbia Colliery No. 8 to the South Fork Railroad branch of the main line of the Pennsylvania Railroad.

45. The Mitchell Coal and Coke Company had from October 30, 1899, to May 1, 1901, a siding or branch railroad running from the main line of the Pennsylvania Railroad, near Gallitzin, Pennsylvania, to the Bennington Colliery, a distance of 2,700 feet, over which empty cars were drawn from the Pennsylvania Railroad tracks to the Bennington Colliery, and loaded cars of coal and coke were drawn from the Bennington Colliery to the main line of the Pennsylvania Railroad.

46. The Mitchell Coal and Coke Company had, from April 1, 1897, to May 1, 1901, a siding or branch railroad running from the Cambria and Clearfield branch of the Pennsylvania Railroad near Hastings, Pennsylvania, to the Hastings Colliery, a distance of

2,595 feet, over which empty cars were drawn from the Cambria and Clearfield branch of the Pennsylvania Railroad tracks to the Hastings colliery, and loaded cars of coal and coke were drawn from the Hastings Colliery to the Cambria and Clearfield branch of the Pennsylvania Railroad.

47. The said Mitchell Coal and Coke Company had at the said Gallitzin Colliery from October 1, 1899, to May 1, 1901, a locomotive, and during that period the said locomotive hauled all the empty cars from the tracks of the Pennsylvania Railroad Company to the mine, and hauled the loaded cars of coal and coke to the Pennsylvania Railroad tracks. The said locomotive weighed 76 net tons.

48. The Altoona Coal and Coke Company had from April 1, 1897, to May 1, 1901, a siding or branch railroad running from the main line of the Pennsylvania Railroad at Kittanning Point, Pennsylvania, to the mines of the Altoona Coal and Coke Company, a distance of approximately 3 miles, over which empty cars were drawn from the main line of the Pennsylvania Railroad tracks to the mines of the Altoona Coal and Coke Company, and loaded cars of coal and coke were drawn from the mines of the Altoona Coal and Coke Company to the main line of the Pennsylvania Railroad.

49. The Altoona Coal and Coke Company had at its said mines from April 1, 1897, to May 1, 1901, a locomotive, which, during said period, hauled all the empty cars from the tracks of the Pennsylvania Railroad to the mines, and hauled the cars of coal and coke from the mines to the Pennsylvania Railroad tracks. The said locomotive weighed 76 net tons.

50. The Glen White Coal and Lumber Company had from April 1, 1897, to May 1, 1901, a siding or

branch railroad running from the main line of the Pennsylvania Railroad to the mines of the Glen White Coal and Lumber Company, a distance of approximately 2 miles, over which empty cars were drawn from the main line of the Pennsylvania Railroad tracks to the mines of the Glen White Coal and Lumber Company, and loaded cars of coal and coke were drawn from the mines of the Glen White Coal and Lumber Company to the main line of the Pennsylvania Railroad.

51. The Glen White Coal and Lumber Company had at its said mines from April 1, 1897, to May 1, 1901, a locomotive, which during said period hauled all the empty cars from the tracks of the Pennsylvania Railroad to the mines and hauled the cars of coal and coke from the mines to the Pennsylvania Railroad tracks.

52. The Latrobe Coal Company had from April 1, 1897, to May 1, 1901, a siding or branch railroad running from the main line of the Pennsylvania Railroad to the mines of the Latrobe Coal Company, a distance of 2,640 feet, over which empty cars were drawn from the main line of the Pennsylvania Railroad tracks to the mines of the Latrobe Coal Company, and loaded cars of coal and coke were drawn from the mines of the Latrobe Coal Company to the main line of the Pennsylvania Railroad.

53. The Millwood Coal and Lumber Company had from April 1, 1897, to May 1, 1901, a siding or branch railroad running from the main line of the Pennsylvania Railroad to the mines of the Millwood Coal and Lumber Company, a distance of $3\frac{1}{8}$ miles, over which empty cars were drawn from the main line of the Pennsylvania Railroad tracks to the mines of the Millwood Coal and Lumber Company, and loaded cars of coal and coke were drawn from the mines of the Millwood

Coal and Lumber Company to the main line of the Pennsylvania Railroad.

54. The Millwood Coal and Lumber Company had at its said mines from April 1, 1897, to May 1, 1901, a narrow gauge locomotive, which during said period hauled all the empty cars from the tracks of the Pennsylvania Railroad to the mines, and hauled the cars of coal and coke from the mines to the Pennsylvania Railroad tracks. The said locomotive weighed much less than 76 tons.

55. The Bolivar Coal and Coke Company had, from April 1, 1897, to May 1, 1901, a siding or branch railroad running from the main line of the Pennsylvania Railroad to the mines of the Bolivar Coal and Coke Company, a distance of 1,080 feet, over which empty cars were drawn from the main line of the Pennsylvania Railroad tracks to the mines of the Bolivar Coal and Coke Company, and loaded cars of coal and coke were drawn from the mines of the Bolivar Coal and Coke Company to the main line of the Pennsylvania Railroad.

56. The Bolivar Coal and Coke Company did not use any locomotive for the purpose of hauling empty cars from the tracks of the Pennsylvania Railroad to the mines, and loaded cars of coal and coke from the mines to the tracks of the Pennsylvania Railroad Company, but the said empty cars were hauled to the said mines of the Bolivar Coal and Coke Company, and the loaded cars of coal and coke were hauled from the said mines of the Bolivar Coal and Coke Company to the Pennsylvania Railroad tracks, by locomotives owned or operated by the Pennsylvania Railroad Company.

57. The said Latrobe Coal Company did not own or use any locomotive, between April 1, 1897, and May 1, 1901, for the purpose of hauling empty cars from

the tracks of the Pennsylvania Railroad to the mines of the said Latrobe Coal Company, and for the purpose of hauling the loaded cars of coal and coke from the said mines to the tracks of the Pennsylvania Railroad Company, and did not so haul any empty or loaded cars as aforesaid. During said period, except in some isolated instances, the hauling of empty cars from the tracks of the Pennsylvania Railroad to the said mines of the Latrobe Coal Company, and the hauling of the loaded cars from the mines to the tracks of the Pennsylvania Railroad, were done by locomotives owned and operated by the Pennsylvania Railroad Company.

58. The said Latrobe Coal Company had from April 1, 1897, to May 1, 1901, a small locomotive weighing $8\frac{1}{2}$ tons, which was used in connection with charging the coke ovens of the Latrobe Coal Company, and occasionally moved an empty car between the mines of the Latrobe Coal Company, and the tracks of the Pennsylvania Railroad Company.

59. The work done by the Mitchell Coal and Coke Company at Gallitzin Colliery, from October 1, 1899, to May 1, 1901, was substantially similar service as that done by the Altoona Coal and Coke Company and the Glen White Coal and Lumber Company in moving empty cars from the tracks of the Pennsylvania Railroad to the mines, and loaded cars from the mines to the tracks of the Pennsylvania Railroad.

60. The said Pennsylvania Railroad Company used the said sidings or railroads of the Mitchell Coal and Coke Company at Gallitzin Colliery, from April 1, 1897, to October 1, 1899, and at Columbia Collieries Nos. 4, 6 and 7, and Bennington Colliery and Hastings Colliery, to run the empty and loaded cars between the tracks of the Pennsylvania Railroad, and the respective collieries, and also used for the same purposes and in a substantially similar manner the sidings or railroads

of the Latrobe Coal Company and the Bolivar Coal and Coke Company to run the empty and loaded cars between the mines of the said companies, respectively, and the tracks of the Pennsylvania Railroad Company from April 1, 1897, to May 1, 1901.

61. From April 1, 1897, to May 1, 1901, the Pennsylvania Railroad Company, in addition to paying the difference between the open published rates and the net quoted rates, also paid to the Altoona Coal and Coke Company a rebate or lateral allowance of 18 cents per gross ton on all coal, and 20 cents per net ton on all coke mined and shipped from the said Altoona Coal and Coke Company's mines to points without the State of Pennsylvania, regardless of the time of shipment, the point of destination, and whether the coal and coke was sold by the Altoona Coal and Coke Company at a delivered price, freight prepaid or f. o. b. at the mines, and whether or not the Altoona Coal and Coke Company was the shipper of the coal and coke.

62. From April 1, 1897, to May 1, 1901, the Pennsylvania Railroad Company, in addition to paying the difference between the open published rates and the net quoted rates, also paid to the Glen White Coal and Lumber Company, a rebate or lateral allowance of 15 cents per gross ton on all coal, and 15 cents per net ton on all coke mined and shipped from said Glen White Coal and Lumber Company's mines to points without the State of Pennsylvania, regardless of the time of shipment, the point of destination, and whether the coal or coke was sold by the Glen White Coal and Lumber Company at a delivered price, freight prepaid or f. o. b. at the mines, and whether or not the Glen White Coal and Lumber Company was the shipper of the coal or coke.

63. From April 1, 1897, to May 1, 1901, the Pennsylvania Railroad Company, in addition to paying the

difference between the open published rates and the net quoted rates, also paid to the Latrobe Coal Company, a rebate or lateral allowance of 10 cents per gross ton on all coal and 10 cents per net ton on all coke mined and shipped from the said Latrobe Coal Company's mines to points without the State of Pennsylvania, regardless of the time of shipment, the point of destination, and whether the coal or coke was sold by the Latrobe Coal Company at a delivered price, freight prepaid or f. o. b. at the mines, and whether or not the Latrobe Coal Company was the shipper of the coal or coke.

64. From April 1, 1897, to April 1, 1899, the Pennsylvania Railroad Company, in addition to paying the difference between the open published rates and the net quoted rates, also paid to the Millwood Coal and Lumber Co., a rebate or lateral allowance of 15 cents per gross ton, and from April 1, 1899, to May 1, 1901, a rebate or lateral allowance of 10 cents per gross ton on all coal mined and shipped from the said mines during the periods aforesaid, regardless of the time of shipment, points of destination, and whether the coal was sold by the said Millwood Coal and Lumber Company at a delivered price, freight prepaid or f. o. b. at the mines, and whether or not the said Millwood Coal and Lumber Company was the shipper of the coal.

65. From April 1, 1897, to May 1, 1901, the Pennsylvania Railroad Company, in addition to paying the difference between the open published rates and the net quoted rates, also paid to the Bolivar Coal and Coke Company a rebate or lateral allowance of 15 cents per net ton on all coke mined and shipped from said Bolivar Coal and Coke Company's mines to points without the State of Pennsylvania, regardless of the time of shipment, the point of destination, and whether the coke was sold by the Bolivar Coal and Coke Company

at a delivered price, freight prepaid or f. o. b. at the mines and whether or not the Bolivar Coal and Coke Company was the shipper of the coke.

66. The rebates were paid under various names and disguises, such as "lateral allowances" and "trackage." That they were given as well as the amounts thereof, were deliberately concealed from the Mitchell Coal and Coke Company by the Pennsylvania Railroad Company.

67. From April 1, 1899, the Pennsylvania Railroad Company never paid or allowed to the Mitchell Coal and Coke Company any rebate whatsoever.

68. The Mitchell Coal and Coke Company was misled by the misrepresentations of the officials of the Pennsylvania Railroad Company, made with the intention of preventing the Mitchell Coal and Coke Company from ascertaining the fact of the payment of rebates.

69. The Mitchell Coal and Coke Company by its officers, made diligent efforts to ascertain whether any rebates or other forms of advantage in the payment of money or otherwise, were being given by the Pennsylvania Railroad Company to the Altoona Coal and Coke Company, Glen White Coal and Lumber Company, Millwood Coal and Lumber Company, Bolivar Coal and Coke Company and Latrobe Coal Company or any of them, but the officials of the Pennsylvania Railroad Company deliberately shut off all avenues of information on this point, and fraudulently told the officers of the Mitchell Coal and Coke Company that none of the said other companies obtained or would obtain any advantage, and that the Mitchell Coal and Coke Company would be notified of any reduction in rates made to any of those companies. At the time when such statements were made, rebates under various forms and disguises

were being paid to the said companies, and continued to be paid until after May 1, 1901.

70. On January 1, 1902, pursuant to notice given to the Altoona Coal and Coke Company on December 28, 1901, the rebate designated as "lateral allowance" on shipments of coke by that company was "entirely discontinued" and the rebate on shipments of coal reduced to twelve cents a gross ton.

71. On January 1, 1902, pursuant to notice given to the Glen White Coal and Lumber Company on December 28, 1901, the rebate designated as "lateral allowance" on shipments of coke by that company was "discontinued entirely," and the rebate on shipments of coal was continued at fifteen cents a gross ton.

72. On January 1, 1902, pursuant to notice given to the Latrobe Coal Company on December 23, 1901, the rebates designated as "lateral allowance" on shipments of coal and coke by that company were "withdrawn."

73. On April 11, 1901, pursuant to notice of that date, the rebate designated as "lateral allowance" on shipments of coke by the Bolivar Coal and Coke Company to "eastern points" was withdrawn.

74. The service rendered from April 1, 1897, to May 1, 1901, by the Pennsylvania Railroad Company to the Altoona Coal and Coke Company and Glen White Coal and Lumber Company in the transportation of coal and coke for those companies, upon which rebates were paid, was a like and contemporaneous service in the transportation of a like kind of traffic, under substantially similar circumstances and conditions, as the service performed for the Mitchell Coal and Coke Company in the transportation

for that company of coal and coke upon which no rebate was paid.

75. The service rendered from April 1, 1899, to May 1, 1901, by the Pennsylvania Railroad Company to the Latrobe Coal Company, the Millwood Coal and Lumber Company and the Bolivar Coal and Coke Company in the transportation of coal for those companies upon which rebates were paid, was a like and contemporaneous service, in the transportation of a like kind of traffic under substantially similar circumstances and conditions as the service performed for the Mitchell Coal and Coke Company in the transportation of coal for that company upon which no rebate was paid.

76. The rebates, other than the difference between the published freight rates and the quoted rates, paid by the Pennsylvania Railroad Company to the Altoona Coal and Coke Company, Glen White Coal and Lumber Company, Latrobe Coal Company, Millwood Coal and Lumber Company and the Bolivar Coal and Coke Company were intended by the Pennsylvania Railroad Company to be, and were, undue and unreasonable discriminations by the said Pennsylvania Railroad Company against the Mitchell Coal and Coke Company.

THEODORE F. JENKINS,
Referee.

FINDINGS OF LAW.

1. Any common carrier engaged in the transportation of passengers or property wholly by railroad or partly by railroad and partly by water, when both are used, under a common control, management or arrangement for a continuous carriage or shipment from one State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from any place in the United

States to an adjacent foreign country or from any place in the United States through a foreign country to any other place in the United States, or from any place in the United States to a foreign country, and from there to a place of trans-shipment or from a foreign country to any place in the United States which shall directly or indirectly, by any special rate, rebate, drawback or other device, charge, demand, collect or receive from any person or persons, a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, than it charges, demands, collects or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, is guilty of unjust and unlawful discrimination, which the law seeks to prohibit.

2. Every such common carrier shall print and keep open to public inspection schedules showing the rates and fares and charges for the transportation of passengers and property, which any such common carrier has established and which are in force at the time upon its route.

3. No advance shall be made in the rates, fares and charges which have been established and published as aforesaid by any such common carrier except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the increased rates, fares or charges will go into effect. Reductions in such published rates, fares or charges shall be made only after three days' previous public notice to be given in the same manner that notice of an advance in rates must be given.

4. When any such common carrier shall have established and published its rates, fares and charges, it is

unlawful for such common carrier to charge, demand, collect or receive from any person or persons a greater or less compensation for the transportation of passengers or property or for any service in connection therewith, than is specified in such published schedule of rates, fares and charges as may at the time be in force.

5. Every such common carrier shall file with the Interstate Commerce Commission, copies of its schedules of rates, fares and charges, which have been established and published, and shall notify promptly the said Commission of all changes made in the same.

6. Where passengers and freight pass over continuous lines or routes operated by more than one such common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall be filed with the said Commission.

7. No advance shall be made in the joint rates, fares or charges shown upon joint tariffs except after ten days' notice to the said Commission, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the increased rates, fares or charges will go into effect. No reduction shall be made in joint rates, fares or charges except after three days' notice given to the Commission.

8. It is unlawful for any such common carrier, party to any joint tariff, to charge, demand, collect or receive from any person or persons a greater or less compensation for the transportation of persons or property or for any service in connection therewith, between any points as to which a joint rate, fare or charge is named thereon, than is specified in the schedule, filed with the Commission, in force at the time.

9. Anyone who induces any such common carrier or any of its officers or agents to discriminate unjustly in the transportation of property or shall aid or abet any such common carrier in any such unjust discrimination is guilty of a misdemeanor, and upon conviction is subject to a fine of five thousand dollars, and at the time when the shipments in the present case were made, was liable to imprisonment for a term of two years.

10. Anyone shipping property at less than the scheduled rates or aiding or abetting therein under an agreement to that effect, with any such common carrier, is guilty of a misdemeanor and upon conviction is subject to the fine above mentioned, and at the time when the shipments in the present case were made, was liable to the imprisonment above mentioned.

11. Each shipment made by the plaintiff under an agreement whereby the defendant was to carry the property at less than the scheduled rates or was to pay the defendant the difference between the scheduled rates and an agreed rate, was a misdemeanor.

12. Every such common carrier guilty of unjust discrimination is liable in a suit to anyone injured thereby for the full amount of the damages sustained, together with a reasonable counsel fee to be taxed and collected as part of the costs in the case.

13. In a suit for damages for unjust discrimination the plaintiff cannot recover on account of a shipment made at less than the scheduled rates, because such a shipment was a misdemeanor.

14. The plaintiff cannot recover for any discrimination made as to seventy per cent. of the coal and coke shipped by the plaintiff prior to April 1, 1899, because such shipments were made at rates less than those scheduled.

15. No part of the plaintiff's claim is barred by the statute of limitations.

16. The plaintiff is entitled to recover the damages it sustained for unjust discrimination as to thirty per cent. of the coal and coke shipped by it prior to April 1, 1899, and as to all of the coal and coke shipped by it since that time.

17. The measure of damages is the rate of rebate allowed or paid to the Altoona Coal and Coke Company on its shipments of coal and coke.

18. The plaintiff is entitled to judgment against the defendant in the sum of Forty-two thousand three hundred and seventy-three dollars and sixty-five cents.

THEODORE F. JENKINS,
Referee.

OPINION.

The Referee considers that the essential findings of fact are the shipments of coal and coke by the plaintiff, the payment of the scheduled rates, the rebates allowed and paid by the defendant and the representations made and concealment practiced by the defendant to prevent the plaintiff from knowing that rebates were paid and allowed.

There was practically no dispute as to the amount of the shipments by the plaintiff, nor the amount of coal and coke shipped from the plaintiff's mines and ovens.

It was claimed upon the part of the plaintiff that it was entitled to damages not only on account of shipments made by it, but also on account of all coal and coke shipped by it or anyone else from its mines and ovens, although sold at an agreed price at the mines or ovens and shipped by the purchaser.

The plaintiff is not entitled to any claim for or on

account of coal or coke purchased from it at its mines or ovens and shipped by the purchaser, because the statute, the aid of which the plaintiff invokes, does not give damages for any injury sustained except as to the property transported for the person making the claim. The portions of the statute approved February 4, 1887, 24 United States Statutes 379, and known as the "Interstate Commerce Act," which apply to the present case are Sec. 2, whereby it is declared unlawful for a common carrier to demand or receive, "from any person or persons a greater or less compensation for any service rendered, * * * in the transportation of property than it charges * * * any other person or persons for doing for him a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions," and Sec. 8, which makes the common carrier violating any provisions of the act "liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation * * * together with a reasonable counsel or attorney's fee to be fixed by the court in every case of recovery." So that it is clear that the act is aimed only at discriminations in transportation, and the plaintiff can recover only in so far as it was a person to whom services were rendered "in the transportation of property." For aught that appears in the testimony, the purchasers of coal and coke at the mines or ovens may have received from the defendant rebates on their shipments.

Prior to April 1, 1899, the defendant allowed generally, a rate of freight lower than it named in the schedules filed with the "Interstate Commerce Commission."

It was agreed between counsel for the plaintiff and the defendant that of the coal and coke shipped by the plaintiff prior to that date, thirty per cent. was at the scheduled rates. That agreement is the basis of

the assessment of damages in so far as the latter includes shipments made prior to April 1, 1899.

After April 1, 1899, the shipments made by the plaintiff were at the published scheduled rates.

Mr. J. G. Searles, the General Coal Freight Agent of the defendant, testified, page 130:

“Q. What period was that when you quoted a rate different from the published rate?

A. It varied. Prior to April 1st, 1899, I think. My recollection is it took effect April 1st, 1899, that we changed our tariffs and issued to the interstate points the net rates; or rather that we made no quotations lower than the tariff rates after that period as to interstate points. I am not quite sure about that. I will have to refresh my memory. I am not quite sure as to the date.”

And page 131:

“Q. During the years 1897 and 1898, up to April 1st, you made out the published rate and the quoted rate on both coke and coal shipments?

A. Yes, sir. To some points.

Q. Both State and interstate?

A. Yes, sir.

Q. From April 1st, 1899, there was one rate to interstate points which was stuck to by the railroad?

A. That is my recollection. I would not like to say.

Q. To the best of your recollection?

A. Yes, sir.”

This testimony was not in any way changed.

During the time covered by the plaintiff's claim, namely from April 1, 1897, to May 1, 1901, the defendant, besides allowing the difference between the scheduled rate and a quoted or agreed rate, paid to the Altoona Coal and Coke Company, the Glen White Coal

and Lumber Company, the Latrobe Coal Company, the Millwood Coal and Lumber Company, and the Bolivar Coal and Coke Company, a rebate or drawback varying in amounts to the different companies. This rebate was ordinarily known as and called "lateral allowance."

The mines of the plaintiff were all in what was designated by the defendant as the Clearfield region. The scheduled rates were the same for all points in the Clearfield region.

The mines of the Altoona Coal and Coke Company were located also in the Clearfield region.

Mr. Searles testified, page 52:

"Tell us what was the lateral allowance on both coal and coke for the Altoona Coal and Coke Company during the period 1897, 1898, 1899, 1900 and 1901?"

A. On shipments to Hollidaysburg and intermediate points the allowance on coal was 13 cents per gross ton, on coke 10 cents per net ton. On shipments to points east of Altoona or south of Hollidaysburg, on coal 18 cents per gross ton, on coke 20 cents per net ton.

Q. That applied to both State and interstate?

A. Yes, sir."

The defendant sought to justify the payment of the rebates because of the expense involved in bringing the coal or coke from the mines or ovens of those companies to which the rebates were paid, to the main line of the defendant, and that the work was performed by the several shippers receiving the rebates. Such a justification involves the conclusion that as the plaintiff's mines were located conveniently to the line of the railroad company, a higher rate would have to be paid for shipments from the plaintiff's mines than from mines not so conveniently located.

The position of the defendant in this regard, how-

ever, cannot be sustained either in fact or in law. It did not cost any more to bring to the defendant's main line, the coal and coke shipped to points east of Altoona or south of Hollidaysburg, than that shipped to Hollidaysburg and intermediate points, yet the rebates paid to the Altoona Coal and Coke Company on the former were 18 cents on each gross ton of coal and 20 cents on each net ton of coke, and on the latter 13 cents and 10 cents respectively. There was no practical difference in so far as the handling of cars was concerned between the mines of the Latrobe Coal Company and the plaintiff's mines, and yet a rebate was paid on shipments from the mines of the Latrobe Coal Company. And when the time came that the defendant would not pay any rebate, notice was given to that effect without regard to the handling of the cars at the mines.

On January 1st, 1902, rebates to the Altoona Coal and Coke Company on shipments of coke were entirely discontinued and the rebate on coal reduced to 12 cents per gross ton, by the following notice (page 48):

“Dec. 28th, 1901.

Altoona Coal and Coke Co.,

Altoona, Pa.

Gentlemen:

I regret that I am compelled to advise you that taking effect on January 1st, 1902, the lateral allowance to your road on shipments of coke will be entirely discontinued and the lateral allowance on coal will be reduced to 12c. per gross ton.

Yours truly,

J. G. Searles,

G. F. A.”

And on January 1st, 1902, the rebates to the Latrobe Coal Company ceased by reason of the following notice (page 49):

"Dec. 23rd, 1901.

Mr. John Lloyd,
PERSONAL
Treasurer, Latrobe Coal Co.,
Altoona, Pa.

Dear Sir.

I beg to advise you that taking effect on January 1st, 1902, the arrangement for lateral allowance on shipments of coal and coke will be withdrawn and no allowance will be made on shipments loaded or forwarded on or after that date.

Yours truly,

J. G. Searles,
G. F. A."

The contention of the defendant is contrary to the law governing the case. The Supreme Court of the United States has met and refuted a similar argument.

In *Wight vs. United States*, 167 U. S., 512, it was held:

"Hauling goods on the Pittsburgh, Cincinnati and St. Louis Railroad from Cincinnati to Pittsburgh and delivering them to a consignee in his warehouse from a siding connection, and hauling similar goods for him from and to the same cities on the Baltimore&Ohio Railroad, and delivering them to him from the station of that road in Pittsburgh, there being no siding connection, is transportation "under substantially similar circumstances and conditions," within the meaning of section 2 of the Interstate Commerce Act of February 4, 1887, c.104, and a rebate allowed him by the Baltimore and Ohio road to compensate for cartage to his warehouse, is a discrimination against other shippers over that road to whom no rebate is allowed."

The Court said, by Mr. Justice Brewer (p. 517):

"Counsel insist that the purpose of the section was not to prohibit a carrier from rendering more service to one shipper than to another for the same charge, but

only that for the same service the charge should be equal, and that the effect of this arrangement was simply the rendering to Mr. Bruening of a little greater service for the fifteen cents than it did to Mr. Wolf. They say that the section contains no prohibition of extra service or extra privileges to one shipper over that rendered to another. They ask whether if one shipper has a siding connection with the road of a carrier it can not run the cars containing such shipper's freight on that siding and thus to his warehouses at the same rate that it runs its cars to its own depot, and there delivers goods to other shippers who are not so fortunate in the matter of sidings. But the service performed in transporting from Cincinnati to the depot in Pittsburgh was precisely alike for each. The one shipper paid fifteen cents a hundred; the other in fact, but eleven and a half cents. It is true he formally paid fifteen cents, but he received a rebate of three and a half cents, and regard must always be had to the substance and not to the form. Indeed the section itself forbids the carrier "directly or indirectly by any special rate, rebate, drawback or other device" to charge, demand, collect or receive from any person or persons a greater or less compensation, etc. And section 6 of the act as amended in 1899, throws light upon the intent of the statute, for it requires the common carrier in publishing schedules to "state separately the terminal charges, and any rules or regulations which in any wise change, affect or determine any part or the aggregate of such aforesaid rates and fares and charges." It was the purpose of the section to enforce equality between shippers, and it prohibits any rebate or device by which two shippers, shipping over the same line, the same distance, under the same circumstances of carriage, are compelled to pay different prices therefor."

Each shipment made by the plaintiff under an agreement to pay a less rate than that scheduled, was

a misdemeanor, *Armour Packing Co. vs. United States*, 209 U. S. 56; and no damages can be recovered by the plaintiff for or on account of any such shipment; for *exturpi causa non oritur actio*.

"The objection," says Lord Mansfield, "that a contract is immoral or illegal as between plaintiff and defendant, sounds at all times very ill in the mouth of the defendant. It is not for his sake, however, that the objection is ever allowed, but it is founded in general principles of policy, which the defendant has the advantage of, contrary to the real justice as between him and the plaintiff—by accident, if I may so say. The principle of public policy is this: *ex dolo malo non oritur actio*. No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. If, from the plaintiff's own stating or otherwise, the cause of action appear to rise *ex turpi causa* or the transgression of a positive law of this country, there the Court says he has no right to be assisted. It is upon that ground the Court goes, not for the sake of the defendant, but because they will not lend their aid to such a plaintiff."

Broom's Legal Maxims, 739.

In *Pennsylvania Railroad Co. vs. International Mining Co.* in the Circuit Court of Appeals of this Circuit to October Term, 1908, No. 36, the court below was sustained in charging the jury, "Up until July 1st, if all the evidence is to be believed, the plaintiff, its competitors and the defendant, were all engaged in violating the law, the railroad in giving rebates unlawfully; the plaintiff in soliciting and accepting the same rebates that its competitors solicited and accepted; and under these circumstances courts do not sit to measure the difference in degree of violation of the law in favor of one party or the other. The question of the money value that such of them received in their violation of the law, will not be looked into nor taken up, nor investigated by courts of justice. Courts of justice are not

instituted to measure difference in money value to two people who are engaged in violation of the same law, and therefore the court will not permit them to recover, not for the purpose of relieving the defendant, but because the plaintiff is just as culpable, and under the law, if any criminality attaches, has been just as much a violator of the law as the defendant. That is the reason I say they cannot recover up to that time."

The referee in assessing damages, has taken as the basis the rebates allowed or paid to the Altoona Coal and Coke Company and considered the "Clearfield region" to be a point of shipment, as the rates were so scheduled. In doing so the referee has thought that he was following both the letter and the spirit of the Interstate Commerce Act.

In *New York, New Haven and Hartford Railroad Co. vs. Interstate Commerce Commission*, 200 U. S. 361, it was held: "The Interstate Commerce Act was enacted to secure equality of rates and to destroy favoritism, and for those purposes is a remedial statute, to be interpreted so as to reasonably accomplish them; its prohibitions as to directly or indirectly charging less than published rates, are all embraced and applicable to every method by which the forbidden results could be brought about." "Whatever powers a carrier may possess as to its commerce not interstate it is subject as to its interstate commerce to the Interstate Commerce Act, the application of whose prohibitions depends not upon whether the carrier intended to violate them, but upon whether it actually does so." Mr. Justice White in delivering the opinion of the Court, said (page 391): "It cannot be challenged that the great purpose of the act to regulate commerce, whilst seeking to prevent unjust and unreasonable rates, was to secure equality of rates as to all, and to destroy favoritism, these last being accomplished by requiring the publication of tariffs and prohibiting secret departures from said tariffs, and forbidding rebates, preferences

and all forms of undue discrimination. To this extent and for these purposes the statute was remediable and is therefore entitled to receive that interpretation, which reasonably accomplishes the great purpose, which it was enacted to subserve."

In *Union Pacific Railroad Co. vs. Goodridge*, 149 U. S. 680, where the case arose under the statute of Colorado, it was held that the proper measure of damages was the rate of rebate allowed a competitor. The Court said, by Mr. Justice Brown (page 697), "Plaintiff's evidence had shown that the Marshall Company had been receiving a rebate upon all coal transported by it to Denver, which was not allowed to the competitors in business and the damages sustained by the plaintiffs were measured by the amount of such rebate, which should have been allowed to them. The question whether they lost profits upon the sale of their coal by reason of the non-allowance of such rebates was too remote to be made an element of their damages. They were entitled to the same terms which the Marshall Company would have received, and damages to the extent to which the Marshall Company was given a preference."

In *Pennsylvania Railroad Co. v. International Mining Co.*, cited above, the same measure of damages was applied and was assigned as error, the Court, however, in overruling the assignment of error, held: "The purpose of the act is clear, viz., to enforce equality of rate for like service in every case, and the mischief is done when for that service a shipper is charged more than any other shipper is charged for "any service rendered, or to be rendered in the transportation of passengers or property. So long as it charges a lower rate for any shipment the law is defeated although on other shipments it may charge the proper rate."

The referee has added thirty per cent. as damages in the nature of interest for the delay in the recovery of the plaintiff's claim.

There is no United States statute of limitations governing this case. Sec. 1047 of the Revised Statutes cannot apply because that relates to the recovery of "any penalty or forfeiture".

"The laws of the several States, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply."

Revised Statutes, Sec. 721.

McClaine vs. Rankin, 197 U. S. 154, 158.

There is no special statute of Pennsylvania governing a like case, so that the only statute of limitations applying is that of March 27, 1713, Sec. 1; 1 Smith's Laws 76, 2 Stewart's Purdon's Digest 2282 pl. 28, which would limit the commencement of an action to six years after the right accrued.

There is, however, a well recognized exception to the enforcement of the statute of limitations, namely, that where the party to be charged has by misrepresentation and concealment prevented the plaintiff from ascertaining that a wrong has been done him, the statute does not begin to run till the plaintiff has learned of the wrong or by due diligence might have so learned.

In Traer vs. Clews, 115 U. S. 528, it was held:

"A suit in which the purchaser from a trustee in bankruptcy of property of the bankrupt estate asserts title against a defendant claiming an adverse interest therein, though brought more than two years after the cause of action accrues to the trustee, is not barred by the limitation of two years prescribed by Rev. Stat. Sec. 5057, if the defendant acquired title by a fraud practiced by him on the trustee, and the fraud was concealed by the defendant from the trustee and the purchaser, until within two years before the suit was brought."

The Court saying, by Mr. Justice Woods (p. 537):

"The State court having entered a general finding

and judgment against the defendants, John W. Traer and Alla D. Traer, his wife, the facts set out in the pleadings of the plaintiff, so far as they are necessary to support the judgment, must be taken as established by the evidence. The question is, therefore, do the facts alleged constitute a good reply to the plea of the two years' limitation filed by Mrs. Traer? We think they do. The fraud by which Mrs. Traer succeeded in purchasing from Tappan for \$1,200 property to which he had the title worth \$15,000, must necessarily have been a fraud carried on by concealment from Tappan of the true value of the property purchased. Such is the averment of the plaintiff's pleadings. But not only was fraudulent concealment in accomplishing the fraudulent purpose averred but also a studious concealment from the plaintiff Clews and Tappan, the trustee, of the connection of Mrs. Traer with the fraud, and their want of means to discover the fraud, until it was revealed by the examination of John W. Traer on September 24, 1879. The case is substantially the same, so far as the question now in hand is concerned, as that of *Bailey v. Glover*, 21 Wall. 342. The averment of fraudulent concealment in that case, as shown by the report, was as follows: "The bill alleged that the" (defendants) "kept secret their said fraudulent acts, and endeavored to conceal them from the knowledge, both of the assignee and of the said Winston & Co., (creditors of the bankrupt) whereby both were prevented from obtaining any sufficient knowledge or information thereof until within the last two years, and that, even up to the present time, they have not been able to obtain full and particular information as to the fraudulent disposition made by the bankrupt of a large part of his property." The Court in that case, upon demurrer, held in effect that these averments were sufficient to take the case from the operation of the same limitation which is set up in the present case. In delivering the judgment of the Court, Mr. Justice Miller

said: "We hold that, where there has been no negligence or laches on the part of a plaintiff in coming to a knowledge of the fraud which is the foundation of the suit, and when the fraud has been concealed; or is of such a character as to conceal itself, the statute does not begin to run until the fraud is discovered or becomes known to the party suing, or those in privity with him."

In *Smith vs. Blachley*, 198 Pa. 173, it was held:

"In an action based upon a fraud, the statute of limitations will run from the date of the fraudulent act complained of, unless such fraud has been actively concealed by the defendant."

The Court, by Mr. Justice Mitchell, saying (p.179):

"If the wrongdoer adds to his original fraud, affirmative efforts to divert or mislead or prevent discovery, then he gives to his original act a continuing character by virtue of which he deprives it of the protection of the statute until discovery."

In the last above cited case, Justice Mitchell says (p. 175):

"It is said in general that in cases of fraud the statute runs only from discovery, or from when with reasonable diligence there ought to have been discovery. But a distinction is made in regard to the starting point of the statute between fraud completed and ending with the act which gives rise to the cause of action, and fraud continued afterwards in efforts or acts tending to prevent discovery. On this distinction there are two widely divergent views. It is held on the one hand that the fraud, though complete and fully actionable, nevertheless operates as of itself a continuing cause of action until discovery, while on the other hand it is held that when the cause of action is once complete, the statute begins to run, and suit must be brought within the prescribed term unless discovery is prevented by some additional and affirmative fraud done with that intent. The United States courts have

adopted the first view in treating the limitations of actions in the bankruptcy acts."

Under the finding of facts as to the direct misrepresentation of the defendant regarding the giving of rebates, if the stricter rule held by the Supreme Court of Pennsylvania were to be applied the running of the statute would be tolled till the plaintiff ascertained or, by diligence could have ascertained, the fraud committed against it.

In 36 Pa. Superior Court 305, it was said by Beaver, J. (p. 310) speaking for that court concerning the statute of limitations, "If any fraud has been practiced upon the plaintiff, so as to mislead her as to her rights in the premises, the statute would not apply, at least until the time of the discovery of the fraud."

The writ in this case was issued upon March 14th, 1905. All of the coal and coke, upon account of the shipments of which, damages have been allowed by the referee, were shipped since March 14th, 1899, except 22,943 gross tons of coal and 6,094 net tons of coke.

Whether or not there has been unjust discrimination is a question of fact. *Inter. Com. Com. vs. Ala. Mid. R. Co.*, 168 U. S. 144, 170.

The testimony taken before the Referee, the requests for findings of fact and law and the several stipulations of the parties filed with the referee are returned herewith.

THEODORE F. JENKINS,
Referee.

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Term, 1900. No. 4.

MITCHELL COAL & COKE COMPANY
vs.
PENNSYLVANIA RAILROAD COMPANY.

The Pennsylvania Railroad, the defendant in the above entitled action, excepts to the report of the Referee in the following particulars:

EXCEPTIONS TO FINDINGS OF FACT.

1. The Referee has erred in finding as follows:

“38. Upon all shipments of coal and coke from the Clearfield and Latrobe regions, over the lines of the Pennsylvania Railroad and its branches, to points without the State of Pennsylvania, from April 1, 1897, to April 1, 1899, the Pennsylvania Railroad Company furnished to any shipper making application therefor, a net rate, which was less than the open published tariff rate to the point to which such shipments were to be made, except that from April 1, 1897, to March 14, 1899, the Mitchell Coal and Coke Company shipped at the published tariff rates 22,028 tons of coal and 5,754 tons of coke, and from March 14, 1899, to April 1, 1899, 915 tons of coal and 340 tons of coke.”

2. The Referee has erred in finding as follows:

“39. From April 1, 1897, to April 1, 1899, the Altoona Coal and Coke Company, the Glen White Coal and Lumber Company, the Latrobe Coal Company, the

Millwood Coal and Lumber Company, and the Bolivar Coal and Coke Company obtained from the Pennsylvania Railroad Company rates for all their shipments of coal and coke to points without the State of Pennsylvania to which the Mitchell Coal and Coke Company obtained like rates for shipments made by it, which rates were less than the published tariff rates, and the difference the Pennsylvania Railroad Company paid to the company making the shipment."

3. The Referee has erred in finding as follows:

"48. The Altoona Coal & Coke Company had from April 1, 1897, to May 1, 1901, a siding or branch railroad running from the main line of the Pennsylvania Railroad at Kittanning Point, Pennsylvania, to the mines of the Altoona Coal and Coke Company, a distance of approximately 3 miles, over which empty cars were drawn from the main line of the Pennsylvania Railroad tracks to the mines of the Altoona Coal and Coke Company, and loaded cars of coal and coke were drawn from the mines of the Altoona Coal and Coke Company to the main line of the Pennsylvania Railroad."

4. The Referee has erred in finding as follows:

"59. The work done by the Mitchell Coal and Coke Company at Gallitzin Colliery, from October 1, 1899, to May 1, 1901, was substantially similar service as that done by the Altoona Coal and Coke Company and the Glen White Coal and Lumber Company in moving empty cars from the tracks of the Pennsylvania Railroad to the mines, and loaded cars from the mines to the tracks of the Pennsylvania Railroad."

5. The Referee has erred in finding as follows:

"61. From April 1, 1897, to May 1, 1901, the Pennsylvania Railroad Company, in addition to paying the difference between the open published rates and the

net quoted rates, also paid to the Altoona Coal and Coke Company a rebate or lateral allowance of 18 cents per gross ton on all coal, and 20 cents per net ton on all coke mined and shipped from the said Altoona Coal and Coke Company's mines to points without the State of Pennsylvania, regardless of the time of shipment, the point of destination, and whether the coal and coke was sold by the Altoona Coal and Coke Company at a delivered price, freight prepaid or f. o. b. at the mines, and whether or not the Altoona Coal and Coke Company was the shipper of the coal and coke."

6. The Referee has erred in finding as follows:

"62. From April 1, 1897, to May 1, 1901, the Pennsylvania Railroad Company, in addition to paying the difference between the open published rates and the net quoted rates, also paid to the Glen White Coal and Lumber Company, a rebate or lateral allowance of 15 cents per gross ton on all coal, and 15 cents per net ton on all coke mined and shipped from said Glen White Coal and Lumber Company's mines to points without the State of Pennsylvania, regardless of the time of shipment, the point of destination, and whether the coal or coke was sold by the Glen White Coal and Lumber Company at a delivered price, freight prepaid or f. o. b. at the mines, and whether or not the Glen White Coal and Lumber Company was the shipper of the coal or coke."

7. The Referee has erred in finding as follows.

"63. From April 1, 1897, to May 1, 1901, the Pennsylvania Railroad Company, in addition to paying the difference between the open published rates and the net quoted rates, also paid to the Latrobe Coal Company, a rebate or lateral allowance of 10 cents per gross ton on all coal and 10 cents per net ton on all coke mined and shipped from the said Latrobe Coal Company's mines to points without the State of Pennsylvania, re-

ardless of the time of shipment, the point of destination, and whether the coal or coke was sold by the Latrobe Coal Company at a delivered price, freight prepaid or f. o. b. at the mines, and whether or not the Latrobe Coal Company was the shipper of the coal or coke."

8. The Referee has erred in finding as follows:

"64. From April 1, 1897, to April 1, 1899, the Pennsylvania Railroad Company, in addition to paying the difference between the open published rates and the net quoted rates, also paid to the Millwood Coal and Lumber Co., a rebate or lateral allowance of 15 cents per gross ton, and from April 1, 1899, to May 1, 1901, a rebate or lateral allowance of 10 cents per gross ton on all coal mined and shipped from the said mines during the periods aforesaid, regardless of the time of shipment, points of destination, and whether the coal was sold by the said Millwood Coal and Lumber Company at a delivered price, freight prepaid or f. o. b. at the mines, and whether or not the said Millwood Coal and Lumber Company was the shipper of the coal."

9. The Referee has erred in finding as follows:

"65. From April 1, 1897, to May 1, 1901, the Pennsylvania Railroad Company, in addition to paying the difference between the open published rates and the net quoted rates, also paid to the Bolivar Coal and Coke Company a rebate or lateral allowance of 15 cents per net ton on all coke mined and shipped from said Bolivar Coal and Coke Company's mines to points without the State of Pennsylvania, regardless of the time of shipment, the point of destination, and whether the coke was sold by the Bolivar Coal and Coke Company at a delivered price, freight prepaid or f. o. b. at the mines and whether or not the Bolivar Coal and Coke Company was the shipper of the coke."

10. The Referee has erred in finding as follows:

"66. The rebates were paid under various names and disguises, such as 'lateral allowances' and 'trackage'. That they were given as well as the amounts thereof, were deliberately concealed from the Mitchell Coal and Coke Company by the Pennsylvania Railroad Company."

11. The Referee has erred in finding as follows:

"67. From April 1, 1899, the Pennsylvania Railroad Company never paid or allowed to the Mitchell Coal & Coke Company any rebate whatsoever."

12. The Referee has erred in finding as follows:

"68. The Mitchell Coal & Coke Company was misled by the misrepresentations of the officials of the Pennsylvania Railroad Company, made with the intention of preventing the Mitchell Coal and Coke Company from ascertaining the fact of the payment of rebates."

13. The Referee has erred in finding as follows:

"69. The Mitchell Coal and Coke Company, by its officers, made diligent efforts to ascertain whether any rebates or other forms of advantage in the payment of money or otherwise, were being given by the Pennsylvania Railroad Company to the Altoona Coal and Coke Company, the Glen White Coal and Lumber Company, Millwood Coal & Lumber Company, Bolivar Coal and Coke Company, and the Latrobe Coal Company or any of them, but the officials of the Pennsylvania Railroad Company deliberately shut off all avenues of information on this point, and fraudulently told the officers of the Mitchell Coal and Coke Company that none of the said other companies obtained or would obtain any advantage, and that the Mitchell Coal and Coke Company would be notified of any reduction in rates made to any of those companies. At the time when such statements

were made, rebates under various forms and disguises were being paid to the said companies, and continued to be paid until after May 1, 1901."

14. The Referee has erred in finding as follows:

"74. The service rendered from April 1, 1897, to May 1, 1901, by the Pennsylvania Railroad Company to the Altoona Coal and Coke Company and Glen White Coal and Lumber Company in the transportation of coal and coke for those companies, upon which rebates were paid, was a like and contemporaneous service in the transportation of a like kind of traffic, under substantially similar circumstances and conditions, as the service performed for the Mitchell Coal and Coke Company in the transportation for that company of coal and coke upon which no rebate was paid."

15. The Referee has erred in finding as follows:

"75. The service rendered from April 1st, 1899, to May 1st, 1901, by the Pennsylvania Railroad Company to the Latrobe Coal Company, the Millwood Coal and Lumber Company and the Bolivar Coal and Coke Company in the transportation of coal for those companies upon which rebates were paid, was a like and contemporaneous service, in the transportation of a like kind of traffic under substantially similar circumstances and conditions as the service performed for the Mitchell Coal and Coke Company in the transportation of coal for that company upon which no rebate was paid."

16. The Referee has erred in finding as follows:

"76. The rebates, other than the difference between the published freight rates and the quoted rates, paid by the Pennsylvania Railroad Company to the Altoona Coal and Coke Company, Glen White Coal and Lumber Company, Latrobe Coal Company, Millwood Coal and Lumber Company and the Bolivar Coal and Coke Com-

pany were intended by the Pennsylvania Railroad Company to be, and were, undue and unreasonable discriminations by the said Pennsylvania Railroad Company against the Mitchell Coal and Coke Company."

17. The Referee has erred in not finding, as proven, the facts embodied in the following request submitted by the defendant:

"10. The mines of the Altoona Coal & Coke Company and of the Glen White Coal & Lumber Company were not located immediately upon the defendant's railroad, but were located on short branches belonging to these companies, respectively, both of which connected with the railroad of the defendant at a point west of Altoona, known as Kittanning Point.

"The branch on which the mines and ovens of the Altoona Coal & Coke Company were located was between four (4) and five (5) miles long, having a maximum gradient of about four (4) per cent., and the branch on which the Glen White Coal and Lumber Company's operations were located was about three (3) miles long with a maximum gradient of about three (3) per cent. The operation of the Altoona Coal and Coke Company were located at a point about 800 feet higher than the point of junction of the branch with the defendant's railroad, and the average grade, therefore, of the branch was between 160 and 200 feet to the mile.

"To enable the altitude to be the more readily overcome the operation of the branch was conducted by and through a series of back switches, three in number.

"Due to the lesser altitude which had to be overcome on the branch leading to the operations of the Glen White Coal and Lumber Company, no back switches were used on that branch, but the grades were heavy.

"On both branches the curvature was very sharp.

"The grade and curvature on these branches op-

erated to materially control and restrict the number of cars that could be moved with safety at one time over the same. Dependent upon the weather conditions the number that could be safely moved varied from four to six, the time consumed in the movement, because of such grades, and curvature, of each draft of cars was about four times as great as would have been consumed in the movement of the same number of cars the same distance over a comparatively level line.

“Due to these conditions it was impracticable for the defendant to deliver empty cars at the mines and ovens of these two companies and to haul the loaded cars therefrom in the manner that it was able to perform a like service at operations located directly on its track or separated therefrom by short spurs or sidings offering no physical operating difficulties.

“If the defendant had itself undertaken to operate these branches it would have been necessary from an operating standpoint to dispatch two engines and crews in the morning from Altoona, and to have kept these engines and crews working on these branches throughout the day and to have then returned them to Altoona for the night.

“At operations on the defendant's railroad where no such physical difficulties existed as those affecting the operation of these branches, no special assignment of an engine was necessary, the work of delivering the empty cars at the mines or ovens and of hauling the loaded ones therefrom being performed by the road engine of the train which had brought these cars to the junction of the mine branch with the railroad or which would haul the train in which the loaded cars would be carried from such junction, the trains themselves being halted at the junction while this work was being performed.

“The mines of the Millwood Coal and Coke Company were located on a narrow gauge railroad about two and one-half ($2\frac{1}{2}$) miles long. Due to the fact

that it was not of the standard gauge, it was impracticable for the defendant to deliver the empty cars at the mines and to take the loaded ones therefrom in the manner in which this service was performed at other operations. As in the case of the branches leading to the Altoona Coal and Coke Company and the Glen White Coal & Lumber Company operations, a special assignment of an engine would have been necessary and in this case of cars also.

"The mines and ovens of the Latrobe Coal Company were located on a short branch or spur about three-fourths ($\frac{3}{4}$) of a mile long, having no unusual grades or curvature.

"The operations of the Bolivar Coal and Coke Company were located on a spur or short branch about one-third ($\frac{1}{3}$) of a mile in length, which offered no unusual physical operative difficulties.

"The various operations of the plaintiff were located on short spurs or sidings, none of which offered any difficulties in the way of operation due to length, grades, curvature or other conditions."

18. The Referee has erred in not finding as proven the facts embodied in the following request submitted by the defendant.

"12. The defendant's tariff rates on coal and coke in force during the period of the action covered the transportation from the mines, and it was consequently bound to transport the loaded cars from the mines and ovens and to deliver the empties thereat at all operations on its lines."

19. The Referee has erred in not finding as proven the facts embodied in the following request submitted by the defendant:

"19. During the period of the action (four years and one month) the aggregate payments by the defendant to the Altoona Coal & Coke Company, the Glen

White Coal & Lumber Company, the Millwood Coal & Coke Company, the Latrobe Coal Company and the Bolivar Coal & Coke Company, both for services rendered by them in the transportation of coal and coke in relief of the defendant, and in adjustments of rates as between open or tariff rates and quoted rates, including coal and coke shipped to points within as well as without the State, amounted to the following sums:

	Amount.
"Altoona Coal & Coke Company	\$48,134.60
"Glen White Coal & Lumber Company	27,790.28
"Millwood Coal & Coke Company	2,742.25
"Latrobe Coal Company	30,494.75
"Bolivar Coal & Coke Company	1,951.67"

20. The Referee has erred in not finding as proven the facts embodied in the following request submitted by the defendant.

"20. In the early part of the year 1898 the plaintiff learned that the defendant was paying the Altoona Coal & Coke Company and the Glen White Coal & Lumber Company for the services rendered by them in transporting cars empty and loaded over their branch lines, and it was the knowledge of this fact which induced it in part to secure an engine and to perform the service at its Gallitzin mine which it afterwards performed. The Plaintiff did not, so far as the evidence discloses, make complaint to the defendant concerning the payments thus made to the Altoona Coal & Coke Company and the Glen White Coal & Lumber Company, nor did it ever make any claim that such payments in any wise amounted to discrimination against it."

21. The Referee has erred in not finding as proven the facts embodied in the following requests submitted by the defendant:

"21. The defendant rendered weekly bills to the

plaintiff for freight due by it, and there is no evidence to the effect that the payment of these was ever accompanied with any protest or objection upon the part of the plaintiff due to the fact that the defendant was making payments to the Altoona Coal & Coke Company and the Glen White Coal & Lumber Company for the services rendered in transporting cars over their branches."

EXCEPTIONS TO FINDINGS OF LAW.

1. The Referee has erred in finding as follows:

"15. No part of the plaintiff's claim is barred by the Statute of Limitations."

2. The Referee has erred in finding as follows:

"16. The plaintiff is entitled to recover the damages it sustained for unjust discrimination as to 30% of the coal and coke shipped by it prior to April 1, 1899, and as to all of the coal and coke shipped by it since that time."

3. The Referee has erred in finding as follows:

"17. The measure of damages is the rate of rebate allowed or paid to the Altoona Coal & Coke Company on its shipments of coal and coke."

4. The Referee has erred in finding as follows:

"18. The plaintiff is entitled to judgment against the defendant in the sum of \$42,373.65."

5. The Referee has erred in adding to the amount of the damages which he has found the plaintiff entitled to recover further damages in the nature of interest which he has calculated at 30%.

6. The Referee has erred in not finding that the so-called lateral payments made by the defendant to the

Altoona Coal & Coke Company, the Glen White Coal & Lumber Company, and the Millwood Coal & Coke Company were made for services rendered by these companies respectively in relief of the defendant and were consequently proper and lawful payments.

7. The Referee has erred in not finding that the payments made by the defendant to the Latrobe Coal & Coke Company were made for trackage and other considerations and were consequently proper and lawful.

8. The Referee has erred in not finding that the defendant was justified in reducing the rate on coke from the operations of the Bolivar Coal & Coke Company to the extent of 15 cents a ton to all points without thereby subjecting the plaintiff to any unjust or undue discrimination, and that as a consequence the payments made by the defendant to the Bolivar Coal & Coke Company of 15 cents per ton in order to effect a reduction in the rate paid by it on its coke shipments did not subject the plaintiff to discrimination forbidden by the Interstate Commerce Acts.

9. The Referee has erred in treating what the defendant did on January 1st, 1902, in respect to either changing or abolishing the payments made to the Altoona Coal & Coke Company, the Glen White Coal & Lumber Company, the Latrobe Coal Company, the Millwood Coal & Coke Company, the Bolivar Coal & Coke Company, as amounting to evidence of the unlawfulness of the payments to these companies which had been made by the defendant during the period of the action.

10. The Referee has erred in not finding that the plaintiff's cause of action and consequent right of recovery in respect to payments made by the defendant either to the Altoona Coal & Coke Company, the Glen White Coal & Lumber Company, or the Millwood Coal

& Coke Company is limited to shipments made by it from its Gallitzin mine between October 1, 1899, and May 1, 1901.

11. The Referee has erred in not finding that the plaintiff's cause of action and consequent right of recovery in respect to all its shipments excepting those made from its Gallitzin mine between October 1, 1899, and May 1, 1901, is limited to such claim, if any, as it could properly assert because of payments made by the defendant to the Latrobe Coal & Coke Company and the Bolivar Coal & Coke Company.

12. The Referee has erred in not finding that the payments complained of in the action, made by the defendant to either the Altoona Coal & Coke Company, the Glen White Coal & Lumber Company, the Millwood Coal & Coke Company, the Latrobe Coal Company or the Bolivar Coal & Coke Company, did not subject the plaintiff to any discrimination forbidden by law and did not consequently injure it.

13. The Referee has erred in not finding that the defendant rendered a like service in the transportation of shipments of any other shipper to that which it rendered to the plaintiff in the transportation of its shipments only where the transportation was from the same point to the same point, and via the same route, and the services performed were rendered contemporaneously.

14. The Referee has erred in not finding that because of the higher rates prevailing throughout the period of the action on coke from the mines of the Latrobe Coal & Coke Company and the Bolivar Coal & Coke Company, than from the operations of the plaintiff, the rates charged to and paid by these companies on shipments of coke made by them were greater than the rate paid by the plaintiff on all its shipments, even

though the so-called lateral payments made to these companies should be regarded and treated as tantamount to reductions in rates, and that as a consequence the plaintiff had no cause of action because of the payments thus made to these two companies, as the net rate paid by them was greater than that paid by the plaintiff.

15. The Referee has erred in not finding that because of the higher rates on coal which prevailed prior to April 1, 1899, from the mines of the Latrobe Coal & Coke Company than from the operations of the plaintiff, the rates charged to, and paid by, that Company on shipments of coal made by it were greater than the rate paid by the plaintiff on all its shipments prior to the date named, even though the so-called lateral payments made to the Latrobe Company could be regarded and treated as tantamount to a reduction in rates and that as a consequence the plaintiff had no cause of action because of the payments made to the Latrobe Company during this period as the net rate paid by it was greater than that paid by the plaintiff.

16. The Referee has erred in not finding that the plaintiff has no cause of action in respect to any of the shipments made by it after the Fall of 1898, because it appeared from the evidence that payments of the freights on these shipments were made voluntarily by the plaintiff unaccompanied by any protest against the right of the defendant to charge and collect the same, and with knowledge of the fact that lateral payments were being made to the Altoona Coal & Coke Company and the Glen White Coal & Lumber Company.

17. The Referee has erred in not finding that the plaintiff had no cause of action in respect to shipments made by it prior to March 1, 1899, because of the Bar of the Statute of Limitations.

18. The Referee has erred in not finding and reporting that judgment should be entered in favor of the defendant.

19. The Referee has erred in not finding and reporting that the action should be dismissed for want of jurisdiction on the part of the Court to entertain it, as the Interstate Commerce Act has conferred exclusive primary jurisdiction of an action of this character upon the Interstate Commerce Commission.

THE PENNSYLVANIA RAILROAD COMPANY,

By J. B. THAYER,

Third Vice President.

FRANCIS I. GOWEN,

JOHN G. JOHNSON,

For Exceptants.

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Term, 1905. No. 4.

MITCHELL COAL & COKE COMPANY
vs.
PENNSYLVANIA RAILROAD COMPANY.

REPORT ON EXCEPTIONS.

The Referee after hearing argument upon the exceptions filed to his report, and after due consideration, has found no reason for changing his report, except as follows:

First. The Referee finds as a fact so much of the tenth request of the defendant as follows:

“The mines of the Altoona Coal and Coke Company and of the Glen White Coal & Lumber Company were not located immediately upon the defendant’s railroad, but were located on short branches belonging to these companies, respectively, both of which connected with the railroad of the defendant at a point west of Altoona, known as Kittanning Point.

“The branch on which the mines and ovens of the Altoona Coal & Coke Company were located was between four (4) and five (5) miles long, having a maximum gradient of about four (4) per cent., and the branch on which the Glen White Coal and Lumber Company’s operations were located was about three (3) miles long with a maximum gradient of about three (3) per cent. The operations of the Altoona Coal and Coke

Company were located at a point about 800 feet higher than the point of junction of the branch with the defendant's railroad, and the average grade, therefore, of the branch was between 160 and 200 feet to the mile.

"To enable the altitude to be the more readily overcome the operation of the branch was conducted by and through a series of back switches, three in number.

"Due to the lesser altitude which had to be overcome on the branch leading to the operations of the Glen White Coal and Lumber Company, no back switches were used on that branch, but the grades were heavy.

"On both branches the curvature was very sharp.

"The grade and curvature on these branches operated to materially control and restrict the number of cars that could be moved with safety at one time over the same. Dependent upon the weather conditions the number that could be safely moved varied from four to six, and the time consumed in the movement, because of such grades and curvature, of each draft of cars was about four times as great as would have been consumed in the movement of the same number of cars the same distance over a comparatively level line." * * * *

"The mines of the Millwood Coal and Coke Company were located on a narrow gauge railroad about two and one-half ($2\frac{1}{2}$) miles long." * * * * "The mines and ovens of the Latrobe Coal Company were located on a short branch or spur about three-fourths ($\frac{3}{4}$) of a mile long, having no unusual grades or curvature.

"The operations of the Bolivar Coal and Coke Company were located on a spur or short branch about one-third ($\frac{1}{3}$) of a mile in length, which offered no unusual physical operative difficulties.

"The various operations of the plaintiff were located on short spurs or sidings, none of which offered any difficulties in the way of operation due to length, grades, curvature, or other conditions."

The Referee does not consider that this finding should have any effect in the determination of the case for the reasons set out in his report, in considering the claim of the defendant in justification of paying the rebates.

The defendant's entire tenth request is not found because it is argumentative.

Second. The twenty-first exception of the defendant to the findings of fact is:

"The defendant rendered weekly bills to the plaintiff for freight due by it, and there is no evidence to the effect that the payment of these was ever accompanied with any protest or objection upon the part of the plaintiff due to the fact that the defendant was making payments to the Altoona Coal & Coke Company and the Glen White Coal & Lumber Company for the services rendered in transporting cars over their branches."

The Referee did not make this finding specifically because if the rights of the plaintiff depended upon protests having been made at the time of the payment of freight, the burden was on the plaintiff to prove such protest, and as no such claim was made by the plaintiff and no testimony whatsoever to that effect was presented, the Referee made no finding on the subject. The Referee had supposed that the request of the defendant had been substantially complied with. On the argument, however, the defendant's counsel insisted upon having the finding made and the Referee finds therefore as requested, though such finding is that of a negative having no effect upon the determination of the case.

Third. In the report there was an error as to the amount of the judgment to which the Referee found that the plaintiff was entitled. The amount should have been \$41,373.65, and not \$42,373.65.

Fourth. The nineteenth exception of the defendant as to the findings of law is:

"The Referee has erred in not finding and reporting that the action should be dismissed for want of jurisdiction on the part of the Court to entertain it, as the Interstate Commerce Act has conferred exclusive primary jurisdiction of an action of this character upon the Interstate Commerce Commission."

The question involved in this exception was not raised specifically before the Referee until the filing of the exceptions. Of course, it was necessarily passed upon in finding that a judgment should be entered for the plaintiff.

On the argument the defendant's counsel relied upon *Texas and Pacific Railroad Company vs. Abilene Cotton Oil Company*, 204 U. S. 426, their position being that the logical conclusion from the judgment in that case is, that no suit for damages for discrimination can be successfully prosecuted until the Interstate Commerce Commission has decided whether or not such a discrimination has been made.

The Referee is unable to agree with the defendant's counsel.

In the opinion in that case, which was delivered by Mr. Justice White, the court said (page 430):

"It was averred that as the rate complained of was the one fixed in the rate sheets which the company had established, filed, published and posted, as required by that act, the State court was without jurisdiction to entertain the cause, and even if such court had jurisdiction, it could not, without disregarding the act to regulate commerce, grant relief upon the basis that the established rate was unreasonable, when it had not been found to be so by the Interstate Commerce Commission."

All the other questions were eliminated in the find-

ings of fact by the court below, the Supreme Court saying (page 432):

"As nothing in these conclusions relates to the averments of discrimination, undue preference or a greater charge for a shorter than a longer haul, those subjects, it may be assumed, were considered to have been eliminated in the course of the trial."

And referring to the court below (page 432):

"That court deemed there was only one question presented for decision, that is, whether, consistently with the act to regulate commerce there was power in the court to grant relief upon the finding that the rate charged for an interstate shipment was unreasonable, although such rate was the one fixed by the duly published and filed rate sheet, and when the rate had not been found unreasonable by the Interstate Commerce Commission."

This question the Supreme Court answered in the negative, and so far as the present controversy is concerned distinctly announced the great purpose of the Interstate Commerce Law was to prevent unjust discrimination, saying (page 439):

"When the act to regulate commerce was enacted there was a contrariety of opinion whether, when a rate charged by a carrier was in and of itself reasonable, the person from whom such a charge was exacted had at common law an action against the carrier because of damages asserted to have been suffered by a discrimination against such person or a preference given by the carrier to another." That the act to regulate commerce was intended to afford an effectual means for redressing the wrongs resulting from unjust discrimination and undue preference, is undoubted. Indeed, it is not open to controversy that to provide for these subjects was among the principal purposes of the act." "And it is apparent that the means by which these great purposes were to be accomplished was the placing upon all carriers the positive duty to establish

schedules of reasonable rates, which should have a uniform application to all and which should not be departed from so long as the established schedule remained unaltered in the manner provided by law."

* * * * "There is not only a relation, but an indissoluble unity between the provision for the establishment and maintenance of rates until corrected in accordance with the statute and the prohibitions against preferences and discriminations."

From a judgment that the Interstate Commerce Commission was the only body authorized to determine whether or not a scheduled rate filed with that commission was unreasonable, the Referee is unable to see that any conclusion can be predicated as to the right of recovery for an unjust discrimination.

An unreasonable rate and an unjust discrimination are two entirely separate and distinct things and have no necessary relation to each other.

The Referee understands the judgment of the Supreme Court of the United States in the above quoted case to be that the measure for ascertaining whether or not there is unjust discrimination is the rate in the schedule filed with the Interstate Commerce Commission, until the commission has found that rate to be unreasonable, and that such must be the case or there would be no standard for ascertaining whether or not there had been an unjust discrimination.

In order to maintain uniformity of rates there is no occasion for the Interstate Commerce Commission to ascertain whether an unjust discrimination has been made by charging a less or greater rate than that stated in the schedule filed.

The Referee finds that the plaintiff had the right to prosecute the present action and was not required to make any application to the Interstate Commerce Commission in order to obtain that right.

The Referee finds that except as above stated, the defendant's exceptions should be dismissed.

There was filed with the Referee a request to tax for the plaintiff a counsel fee of Five thousand dollars. The Referee does not consider that he has the right to tax any of the costs in the case, including the counsel fee. The Referee finds that the services performed by the plaintiff's counsel in this case are worth at least Five thousand dollars, and that they are entitled to a fee of at least that amount.

All of which is respectfully submitted.

THEODORE F. JENKINS,

Referee.

ALTOONA COAL & COKE CO.

INTERSTATE SHIPMENTS—1897
COAL.

DATE.	CONSIGNEE.	DESTINATION.	TONS. CWT.	
1897.				
April,				
	M. Dobbins,	Kinkora, N. J.,	45	15
May				
	M. Dobbins,	do	23	3
	The Allegheny Company,	Washington, D. C.	24	
June				
	M. Dobbins,	Kinkora, N. J.	24	7
	P. W. & B. R. R.,	Wilmington, Del.	208	16
	The Allegheny Co.,	Washington, D. C.	148	5
July				
	M. Dobbins,	Kinkora, N. J.	73	15
	United R. R. of N. J.,	South Amboy, N. J.	337	11
	do	Camden, N. J.	227	12
	do	Coalport, N. J.	225	6
	The Allegheny Co.,	Waterloo, Va.	27	18
	do	Washington, D. C.	405	4
August				
	M. Dobbins,	Kinkora, N. J.	28	3
	do	do	28	3
	United R. R. of N. J.,	Philipsburg, N. J.	24	3
	The Allegheny Co.,	Waterloo, Va.	281	3
	do	Washington, D. C.	23	3
September				
	M. Dobbins,	Kinkora, N. J.	23	8
	Globe Fireproofing Com-			
	pany,	Clayville, N. J.	62	16
	The Allegheny Company,	Washington, D. C.	78	14
October				
	M. Dobbins,	Kinkora, N. J.	20	14
	The Allegheny Company,	Washington, D. C.	44	6

November

M. Dobbins,	Kinkora, N. J.	22	10
The Allegheny Company,	Washington, D. C.	144	19

December

M. Dobbins,	Kinkora, N. J.	24	1
Robt. Mitchell,	So. Amboy, N. J.	125	8
The Allegheny Company,	Washington, D. C.	119	16

INTERSTATE SHIPMENTS—1898

COAL.

DATE.	CONSIGNEE.	DESTINATION.	TONS.	CWT.
1898.				
January				
	J. A. Roebling & Sons,	Trenton, N. J.	293	13
	The Allegheny Company,	Washington, D. C.	99	1
February				
	J. A. Roebling & Sons,	Trenton, N. J.	53	15
	The Allegheny Company,	Washington, D. C.	104	8
March				
	M. Dobbins,	Kinkora, N. J.	59	5
	The Allegheny Company,	Washington, D. C.	115	15
April				
	M. Dobbins,	Kinkora, N. J.	102	8
	The Allegheny Company,	Washington, D. C.	116	
May				
	M. Dobbins,	Kinkora, N. J.	94	7
	The Allegheny Company,	Washington, D. C.	169	
June				
	M. Dobbins,	Kinkora, N. J.	48	6
	The Allegheny Company,	Washington, D. C.	223	
July				
	N. J. Smith,	Elwyn, N. J.	23	10
	M. Dobbins,	Kinkora, N. J.	23	17
	The Allegheny Company,	Washington, D. C.	215	1
August				
	M. Dobbins,	Kinkora, N. J.	63	13
	The Allegheny Company,	Washington, D. C.	95	2

Schedule.

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September

Henrietta Coal M'ng Co.,	New Castle, Del.	29	2
do	Staten Island, N. Y.	28	10
do	South Amboy, N. J.	53	7
Globe Fireproofing Co.,	Clayville, N. J.	102	5
M. J. Smith,	Elwyn, N. J.	21	10
M. Dobbins,	Kinkora, N. J.	90	2
The Allegheny Company,	Martinsburg, W. Va.	22	
do	Washington, D. C.	137	2
do	Winchester, Va.	23	13

October

Miller Supply Company,	Winchester, Va.	36	16
M. Dobbins,	Kinkora, N. J.	24	2
The Allegheny Company,	Roslyn, Va.	24	6
do	Clear Brook, Va.	25	
do	Washington, D. C.	158	14
P. R. R. Co.,	Wilmington, Del.	968	8

November

The Allegheny Company,	Roslyn, Va.	123	2
do	Winchester, Va.	25	8
do	Martinsburg, W. Va.	65	10
do	Washington, D. C.	106	3
P. R. R. Co.,	Wilmington, Del.	1691	14
The Allegheny Company,	Washington, D. C.	88	16
Wakefield Fire Brick Co.,	North East, Md.	25	

December

The Allegheny Company,	Roslyn, Va.	21	
Puttman Company,	Wilmington, Del.	61	2
The Allegheny Company,	Washington, D. C.	129	18

INTERSTATE SHIPMENTS—1899

COAL.

DATE.	CONSIGNEE.	DESTINATION.	TONS.	CWT.
1899				
January				
	P. R. R. Co.,	Wilmington, Del.	1415	17

January

A. S. Edwards,	Claymont, Del.	31	6
The Allegheny Company,	Washington, D. C.	253	8
do	Alexandria, Va.	23	7
L. M. Bender,	Martinsburg, W. Va.	54	18
Henshaw & Lenkhide,	do	19	11

February

P. R. R. Co.,	Wilmington, Del.	377	17
The Allegheny Company,	Washington, D. C.	103	13
Miller Supply Co.,	Winchester, Va.	318	14
Columbia Coal Min. Co.,	So. Amboy, N. J.	381	12

March

The Allegheny Company,	Washington, D. C.	219	14
Wakefield Fire Brick Co.,	North East, Md.	272	
The Allegheny Company,	Martinsburg, W. Va.	29	
do	Roslyn, Va.	54	6
do	Waterloo, Va.	259	14

April

The Allegheny Company,	Washington, D. C.	196	13
P. W. & B. R. R.,	do	113	15
do	Wilmington, Del.	62	11
Wakefield Fire Brick Co.,	North East, Md.	24	14
The Allegheny Company,	Roslyn, Va.	23	14

May

The Allegheny Company,	Washington, D. C.	282	17
P. R. R. Co.,	Jersey City, N. J.	22	18
The Allegheny Company,	Roslyn, Va.	50	4
do	Waterloo, Va.	200	11

June

G. W. R. Comstock,	Claymont, N. J.	59	7
The Allegheny Company,	Washington, D. C.	173	9
Wakefield Fire Brick Co.,	North East, Md.	24	9
The Allegheny Company,	Roslyn, Va.	150	13
do	Wilmington, Del.	30	6

July

G. W. R. Comstock,	Claymont, N. J.	52	8
P. R. R. Co.,	Meadows, N. J.	22	1
The Allegheny Company,	Washington, D. C.	159	1
do	Roslyn, Va.	136	1
do	Frederick Road, Md.		

Schedule.

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August

G. W. R. Comstock,	Claymont, N. J.	56	3
P. R. R. Co.,	Camden, N. J.	50	5
The Allegheny Company,	Washington, D. C.	336	13
P. W. & B. R. R. Co.,	Wilmington, Del.	303	12
The Allegheny Company,	Wilmington, Del.	59	4
H. S. Kerbaugh,	Arbutus, Md.	29	14

September

G. W. R. Comstock,	Clayton, Del.	45	3
The Allegheny Company,	Washington, D. C.	193	12
do	Inwood, W. Va.	26	10
Wakefield Fire Brick Co.,	North East, Md.	26	5
The Allegheny Company,	Roslyn, Va.	205	5
do	Frederick Road, Md.	25	10

October

G. W. R. Comstock,	Claymont, N. J.	44	17
P. R. R. Co.,	Camden, N. J.	19	8
do	Lambertville, N. J.	28	8
Globe Fireproofing Co.,	Clayville, N. J.	25	8
J. R. Davidson,	Green Castle, Md.		
H. A. Brown,	Wilmington, Del.	25	3
The Allegheny Company,	Roslyn, Va.	71	9

November

G. W. R. Comstock,	Claymont, N. J.	25	
P. R. R. Co.,	Camden, N. J.	28	17
P. R. R. Co.,	Meadows, N. J.	110	17
H. A. Brown,	Wilmington, Del.	25	18
The Allegheny Company,	Frederick Road, Md.	32	15

December

P. R. R. Co.,	Jersey City, N. J.	28	12
Wakefield Fire Brick Co.,	North East, Md.	37	10
J. A. Roebling & Sons Co.,	Trenton, N. J.	80	16

INTERSTATE SHIPMENTS—1900

COAL.

DATE.	CONSIGNEE.	DESTINATION.	TONS.	CWT.
1900.				
January				
	J. A. Roebling & Sons,	Trenton, N. J.	136	18
	G. W. R. Comstock,	Claymont, N. J.	21	
	Henrietta Coal M'ng Co.,	So. Amboy, N. J.	275	2
February				
	J. A. Roebling & Sons Co.,	Trenton, N. J.	90	11
March				
	Wright Sons,	Newark, N. J.	31	
	J. A. Roebling & Sons Co.,	Trenton, N. J.	403	12
	Henrietta Coal M'ng Co.,	So. Amboy, N. J.	85	15
April				
May				
	The Allegheny Company,	Waterloo, Va.	209	7
	do	Roslyn, Va.	45	14
	Wakefield Fire Brick Co.,	North East, Md.	24	6
	M. Dobbins,	Kinkora, N. J.	80	2
	Budd Bros.,	Camden, N. J.	39	2
	Columbia Coal M'ng Co.,	So. Amboy, N. J.	530	12
June				
	The Allegheny Company,	Waterloo, Va.	77	1
	G. W. R. Comstock,	Claymont, N. J.	74	8
July				
	The Allegheny Company,	Waterloo, Va.	24	1
	M. Dobbins,	Kinkora, N. J.	52	14
	G. W. R. Comstock,	Claymont, N. J.	49	14
August				
	Henrietta Coal M'ng Co.,	So. Amboy, N. J.	1181	
September				
	H. S. Kerbaugh,	Metuchen, N. J.	55	9
	Wakefield Fire Brick Co.,	North East, Md.	25	2
	G. W. R. Comstock,	Claymont, N. J.	84	16
	Henrietta Coal M'ng Co.,	So. Amboy, N. J.	1737	8

Schedule.

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September

H. S. Kerbaugh,	Metuchen, N. J.	106	13
Henrietta Coal M'ng Co.,	So. Amboy, N. J.	212	

November

G. W. R. Comstock,	Claymont, N. J.	41	4
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December

Wakefield Fire Brick Co.,	North East, Md.	30	13
G. W. R. Comstock,	Claymont, N. J.	39	10

INTERSTATE SHIPMENTS—1901

C O A L.

DATE.	CONSIGNEE.	DESTINATION.	TONS. CWT.	
1901.				
January				
	H. S. Kerbaugh,	Arbutus, Md.	61	2
	do	Metuchen, N. J.	25	7
February				
	Wakefield Fire Brick Co.,	North East, Md.	31	6
	H. A. Kerbaugh,	Arbutus, Md.	26	1
	do	Metuchen, N. J.	52	4
March				
	H. S. Kerbaugh,	Arbutus, Md.	41	15
	do	Metuchen, N. J.	167	10
	do	Frederick Road, Md.	66	
	do	Harrison, N. J.	31	6
April				
	Columbia Coal M'ng Co.,	South Amboy, N. J.	132	
	New England Brick Co.,	Mechanicsville, N. Y.	80	3
	American Steel Hoop Co.,	Youngstown, O.	20	12

INTERSTATE SHIPMENTS—1897

COKE.

DATE.	CONSIGNEE.	DESTINATION.	TONS. CWT.	
1897.				
April				
	Whitney Glass Company,	Glassboro, N. J.	17	18
	Troy Iron & Steel Co.,	Troy, N. J.	764	12
	Windsor Plow Company,	Batavia, N. Y.	19	3
	Waterbury Brass Cmp'y,	Waterbury, Conn.	28	10
	Florence Implement Co.,	Florence, Mass.	30	2
	R. D. Wood & Co.,	Millville, N. J.	29	
	Hylands & Company,	Boston, Mass.,	26	
	Union Implement Works,	Lynn, Mass.,	275	
	Sessions Foundry Co.,	Bristol, Conn.	17	14
May				
June				
	H. P. Husband,	Conawago, Md.	17	15
July				
	Port Oram Furnace,	Port Oram, N. J.	1720	9
August				
	Port Oram Furnace,	Port Oram, N. J.	1724	19
September				
	Port Oram Furnace,	Port Oram, N. J.	965	
October				
	Port Oram Furnace,	Port Oram, N. J.	813	10
November				
	Port Oram Furnace,	Port Oram, N. J.	1268	10
December				
	Port Oram Furnace,	Port Oram, N. J.	1234	15

INTERSTATE SHIPMENTS—1898

C O K E.

DATE.	CONSIGNEE.	DESTINATION.	TONS. CWT.	
1898.				
January				
	Maryland Steel Co.,	Sparrows Pt., Md.	681	6
	Star Glass Co.,	Milford, N. J.	16	5
February				
	H. P. Husband,	Conawago, Md.	14	
	Maryland Steel Co.,	Sparrows Pt., Md.	852	18
March				
	Maryland Steel Co.,	Sparrows Pt., Md.	1274	
April				
	Maryland Steel Co.,	Sparrows Pt., Md.	940	14
May				
	Maryland Steel Co.,	Sparrows Pt., Md.	663	17
June				
	Maryland Steel Co.,	Sparrows Pt., Md.	904	1
July				
	Maryland Steel Co.,	Sparrows Pt., Md.	788	7
August				
	Maryland Steel Co.,	Sparrows Pt., Md.	442	8
September				
	Geo. C. Pedue,	Flemington, N. J.	16	
November				
	E. H. Flood,	Atico, N. J.	17	18
December				
	E. H. Flood,	Atico, N. J.	15	12

INTERSTATE SHIPMENTS— 1899

C O K E.

DATE.	CONSIGNEE.	DESTINATION.	TONS. CWT.	
1899.				
January				
	Chas. B. Lennig Co.,	Birdsboro, N. J.	58	16
	More-Jonas Glass Co.,	Bridgeton, N. J.	14	
February				
	Chas. B. Lennig Co.,	Birdsboro, N. J.	62	
	More-Jonas Glass Co.,	Bridgeton, N. J.	24	
March				
	Chas. B. Lennig Co.,	Birdsboro, N. J.	68	15
	Maryland Steel Co.,	Sparrows Pt., Md.	1067	8
April				
	Chas. B. Lennig Co.,	Birdsboro, N. J.	34	2
	Maryland Steel Co.,	Sparrows Pt., Md.	742	6
	New England Copper Co.,	Central Falls, R. I.	116	9
May				
	Chas. B. Lennig Co.,	Birdsboro, N. J.	33	3
	Maryland Steel Co.,	Sparrows Pt., Md.	666	1
June				
	Chas. B. Lennig Co.,	Birdsboro, N. J.	67	12
	Maryland Steel Co.,	Sparrows Pt., Md.	705	
July				
	Chas. B. Lennig Co.,	Birdsboro, N. J.	67	5
	Maryland Steel Co.,	Sparrows Pt., Md.	713	11
August				
	Chas. B. Lennig Co.,	Birdsboro, N. J.		
	Maryland Steel Co.,	Sparrows Pt., Md.	628	8
September				
	Maryland Steel Co.,	Sparrows Pt., Md.	978	10
October				
	Chas. B. Lennig Co.,	Birdsboro, N. J.	32	2
	Maryland Steel Co.,	Sparrows Pt., Md.	1369	3
November				
	Chas. B. Lennig Co.,	Birdsboro, N. J.	66	12
	Maryland Steel Co.,	Sparrows Pt., Md.	827	17
	Amer'n Lead Pencil Co.,	Hoboken, N. J.	16	18
December				
	Maryland Steel Co.,	Sparrows Pt., Md.	754	12

INTERSTATE SHIPMENTS—1900

C O K E.

DATE.	CONSIGNEE.	DESTINATION.	TONS. CWT.	
1900.				
January				
	Gaynor Glass Co.,	Salem, N. J.	26	
February				
	N. J. Zinc Co.,	Newark, N. J.	19	9
March				
	N. J. Zinc Co.,	Newark, N. J.	240	19
	Vineland Glass Co.,	Vineland, N. J.	22	7
April				
	Gaynor Glass Co.,	Salem, N. J.	295	
	N. J. Zinc Co.,	Newark, N. J.	98	5
	Vineland Glass Co.,	Vineland, N. J.	47	16
May				
	Vineland Glass Co.,	Vineland, N. J.	37	5
	Cooper & Hewitt,	Riegelsville, N. J.	32	15
	Gaynor Glass Co.,	Salem, N. J.	40	9
June				
	Harrison & Gilmore & Son,	Utica, N. Y.	42	19
	Empire Portland Cement Company,	Warrens, N. Y.	104	10
July				
	Ward & Vandergrift,	Elm, N. J.	17	12
	Harrison & Gilmore & Son,	Utica, N. Y.,	18	10
August				
	Swedesboro Glass Co.,	Swedesboro, N. J.	24	18
	Harrison & Gilmore & Son,	Utica, N. Y.	28	16
	Raritan Copper Co.,	Perth Amboy, N. J.	102	12
	Amer'n Lead Pencil Co.,	Hoboken, N. J.	26	8
	L. R. & C. J. Clark,	Utica, N. Y.	28	18
September				
	Harrison & Gilmore & Son,	Utica, N. Y.	97	7
	Diamond Drill Co.,	Birdsboro, N. J.	17	13

October

Ansonia Refining Co.,	Ansonia, Conn.	50	19
D. E. Williams & Co.,	Perth Amboy	462	18
Harrison & Gilmore & Son,	Utica, N. Y.	25	5

November

Ansonia Refining Co.,	Ansonia, Conn.	39	3
D. E. Williams & Co.,	Perth Amboy	903	17
Amer'n Lead Pencil Co.,	Hoboken, N. J.	42	10
Ellis Yarnell,	Utica, N. Y.	51	15

December

Ansonia Refining Co.,	Ansonia, Conn.	43	17
Amer'n Lead Pencil Co.,	Hoboken, N. J.	22	10
D. E. Williams & Co.,	Perth Amboy, N. J.	888	7

INTERSTATE SHIPMENTS—1901

COKE.

DATE.	CONSIGNEE.	DESTINATION.	TONS.	CWT.
1901.				
January				
	Gaynor Glass Works,	Salem, N. J.	24	13
	Harrison Gilmore & Sons,	Utica, N. Y.	46	11
	Ellis Yarnell & Son,	Alto, N. J.	16	1
	D. E. Williams,	Perth Amboy	1910	19
	Benjamin Ather & Co.,	Newark, N. J.	25	13
February				
	D. E. Williams,	Perth Amboy, N. J.	1005	15
	Benjamin Ather & Co.,	Newark, N. J.	45	4
March				
	D. E. Williams,	Perth Amboy	1106	6
April				
	Fanel Foundry & Ma- chine Company,	Ansonia, Conn.	45	6

GLEN WHITE COAL & LUMBER COMPANY

INTERSTATE SHIPMENTS—COAL

From April, 1897, to May 1st, 1901.

INTERSTATE SHIPMENTS—1897

C O A L.

DATE.	CONSIGNEE.	DESTINATION.	TONS.
1897.			
April		Perth Amboy, N. J.	204.35
May		Perryville, Md.	83.3
June		Perryville, Md.	89.85
		Canton Piers, Md.	646.8
		Sparrows Point, Md.	952.15
		Colora, Md.	22.
		North East, Md.	24.6
July		Canton Piers, Md.	179.75
		Sparrows Point, Md.	1349.95
		Asbury Park, N. J.	21.
August		Perryville, Md.	20.9
		Canton Piers, Md.	248.65
		Sparrows Point, Md.	1104.25
September		Sparrows Point, Md.	51.6
October (Nothing)			
November		Perryville, Md.	49.25
		Sparrows Point, Md.	111.85
December		Sparrows Point, Md.	146.6
		Trenton, N. J.	165.15
		Easton, Md.	20.4

INTERSTATE SHIPMENTS—1898

C O A L.

DATE.	CONSIGNEE.	DESTINATION.	TONS.
1898.			
January		Sparrows Point, Md.	686.5
		Port Deposit, Md.	28.3
February		Perryville, Md.	80.55
		Port Deposit, Md.	45.1
March		Perryville, Md.	91.7
		Sparrows Point, Md.	425.25
		Port Deposit, Md.	25.05
April		Sparrows Point, Md.	264.9
		Trenton, N. J.	175.
May		Trenton, N. J.	231.95
June		Sparrows Point, Md.	834.95
		Trenton, N. J.	42.9
July		Sparrows Point, Md.	822.2
August		Sparrows Point, Md.	453.75
September		Sparrows Point, Md.	232.
		Wilmington, Del.	48.2
October		Sparrows Point, Md.	617.5
		Liberty Grove, Md.	127.9
November		Sparrows Point, Md.	1165.45
		North East, Md.	27.
December		Sparrows Point, Md.	1293.75

INTERSTATE SHIPMENTS—1899

COAL.

DATE.	CONSIGNEE.	DESTINATION.	TONS.
1899.			
January		Sparrows Point, Md.	49.35
		Canton Piers, Md.	1630.85
February		Sparrows Point, Md.	531.95
		Trenton, N. J.	78.9
		Perryville, Md.	43.65
March		Sparrows Point, Md.	2234.1
		Trenton, N. J.	93.6
		Perryville, Md.	87.65
April		Sparrows Point, Md.	1204.65
June		Perryville, Md.	93.
July		Perryville, Md.	50.1
August		New Midway, Md.	23.7
September		Trenton, N. J.	191.15
October		Trenton, N. J.	166.4
November		Trenton, N. J.	45.3
December		Trenton, N. J.	39.4

INTERSTATE SHIPMENTS—1900

C O A L.

DATE.	CONSIGNEE.	DESTINATION.	TONS.
1900.			
January		Trenton, N. J.	197.55
February		Trenton, N. J.	30.9
April		Cockeysville, Md.	82.8
		Roslyn, Va.	95.55
May		Cockeysville, Md.	30.1
June		South Amboy, N. J.	346.8
July		Cockeysville, Md.	147.75
		Havre de Grace, Md.	31.05
		Bellair, Md.	119.7
		Mt. Washington, Md.	25.85
		Baltimore, Md.	53.6
		Annapolis, Md.	31.5
		Aberdeen, Md.	32.1
		New Midway, Md.	32.
		Liberty Grove, Md.	23.45
August		Bellair, Md.	313.15
		Aberdeen, Md.	25.8
		Perryville, Md.	99.2
		Washington, D. C.	43.35
September		Bellair, Md.	324.7
		Perryville, Md.	87.95
October		Baltimore, Md.	116.7
		New Midway, Md.	28.5
November		Perryville, Md.	108.75
December		Perryville, Md.	25.2

INTERSTATE SHIPMENTS—1901
C O A L.

DATE.	CONSIGNEE.	DESTINATION.	TONS.
1901.			
January		Bellair, Md.	31.5
		Perryville, Md.	89.55
		Fallston, Md.	20.1
February		Texas, Md.	31.4
		Elmira, N. Y.	26.5
		Queenstown, Md.	61.25
March		Beverly, N. J.	26.2
		Riverton, N. J.	42.
		Riverside, N. J.	30.55
		Wilmington, Del.	105.4
April		Wilmington, Del.	158.6
		Perryville, Md.	79.65

GLEN WHITE COAL & LUMBER COMPANY

INTERSTATE SHIPMENTS—COKE

From April, 1897, to May 1st, 1901.

INTERSTATE SHIPMENTS—1897
C O K E.

DATE.	CONSIGNEE.	DESTINATION.	TONS.
1897.			
October		Sparrows Pt., Md.	903.95
		Sewaren, N. J.	142.6
		Mauren, N. J.	117.9

November

Sparrows Point, Md. 2138.85

December

Sparrows Point, Md. 3135.4

INTERSTATE SHIPMENTS—1898

C O K E.

DATE.	CONSIGNEE.	DESTINATION.	TONS.
1898.			
January		Sparrows Point, Md.	2972.65
		Sewaren, N. J.	93.55
February		Sparrows Point, Md.	2420.55
		Sewaren, N. J.	223.05
March		Sparrows Point, Md.	1932.3
		Mauren, N. J.	17.9
April		Sparrows Point, Md.	2087.95
May		Sparrows Point, Md.	409.05
		Woodsboro, Md.	27.6
July		Woodsboro, Md.	205.25
November		Baltimore, Md.	81.85

INTERSTATE SHIPMENTS—1899

C O K E.

DATE.	CONSIGNEE.	DESTINATION.	TONS.
1899.			
January		Woodsboro, Md.	40.7

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February

Sparrows Pt., Md.	71.8
Woodsboro, Md.	28.5
Ely, Vt.	80.1

March

Sparrows Pt., Md.	302.45
Woodsboro, Md.	80.4
Ely, Vt.	122.15

April

Sparrows Pt., Md.	277.9
Buffalo, N. Y.	154.55

May

Sparrows Pt., Md.	448.95
Woodsboro, Md.	34.25

June

Sparrows Pt., Md.	693.
Ely, Vt.	96.95

July

Woodsboro, Md.	19.65
Central Falls, R. I.	36.50
Hoboken, N. J.	18.

August

Woodsboro, Md.	14.95
Perth Amboy, N. J.	21.25
Alexandria, Va.	21.45

September

Sparrows Pt., Md.	760.1
Bay Way, N. J.	340.7

October

Sparrows Pt., Md.	1340.4
Bay Way, N. J.	498.45

November

Sparrows Pt., Md.	1490.65
Bay Way, N. J.	496.15
Vineland, N. J.	127.6

December

Sparrows Pt., Md.	1280.35
Perth Amboy, N. J.	252.15
Bay Way, N. J.	312.4
Vineland, N. J.	21.85

INTERSTATE SHIPMENTS—1900

C O K E.

DATE.	CONSIGNEE.	DESTINATION.	TONS.
1900.			
January		Perth Amboy, N. J.	295.3
		Bay Way, N. J.	607.1
		Sparrows Pt., Md.	1140.35
February		Sparrows Pt., Md.	1381.1
		Bay Way, N. J.	491.05
March		Sparrows Pt., Md.	1810.25
		Bay Way, N. J.	812.6
April		Sparrows Pt., Md.	1501.7
		Bay Way, N. J.	538.85
		Woodsboro, Md.	42.65
May		Sparrows Pt., Md.	1893.1
		Bay Way, N. J.	188.95
		Woodsboro, Md.	18.75
June		Sparrows Pt., Md.	2208.3
July		Sparrows Pt., Md.	1839.75
August		Sparrows Pt., Md.	2004.45
		Woodsboro, Md.	49.1
		Frederick, Md.	64.3
September		Sparrows Pt., Md.	1882.4
		Frederick, Md.	64.3
October		Sparrows Pt., Md.	2019.5
November		Sparrows Pt., Md.	1967.85
December		Sparrows Pt., Md.	2191.15

INTERSTATE SHIPMENTS—1901

C O K E.

DATE.	CONSIGNEE.	DESTINATION.	TONS.
1901.			
January		Sparrows Pt., Md.	1652.6
		Newark, N. J.	58.3
February		Sparrows Pt., Md.	1843.15
March		Sparrows Pt., Md.	2440.55
April		Sparrows Pt., Md.	2245.2

BOLIVAR COAL & COKE COMPANY

INTERSTATE SHIPMENTS OF COKE

From April 1st, 1897, to May 1st, 1901.

INTERSTATE SHIPMENTS—1897

C O K E.

DATE.	CONSIGNEE.	DESTINATION.	TONS.
1897.			
Sept. 13,		Bridgeton, N. J.	

INTERSTATE SHIPMENTS—1899

C O K E.

DATE.	CONSIGNEE.	DESTINATION.	TONS.
1899.			
May 4		Woodbridge, N. J.	
July 10		Port Oram, N. J.	
" 24		do	
Aug. 31		Utica, N. Y.	
" 31		Sparrows Pt., Md.	
" 31		do	
Sept. 2		Sparrows Pt., Md.	
" 22		do	
" 25		do	
" 27		do	
" 30		do	
Oct. 16		Sparrows Pt., Md.	
" 16		do	
" 20		do	
" 23		do	
" 27		do	
Nov. 6		Sparrows Pt., Md.	
" 8		Salem, N. J.	
" 14		Bay View, Md.	
" 14		Sparrows Pt., Md.	
" 17		Bay View, Md.	
" 17		Sparrows Pt., Md.	
" 20		do	
" 26		Sparrows Pt., Md.	
Dec. 2		Sparrows Pt., Md.	
" 5		do	
" 8		do	
" 12		do	
" 13		do	
" 14		do	
" 19		do	
" 23		do	
" 27		do	
" 30		do	
" 30		do	

INTERSTATE SHIPMENTS—1900

COKE.

DATE.	CONSIGNEE.	DESTINATION.	TONS.
1900.			
Jan. 3		Sparrows Pt., Md.	
" 9		do	
" 13		do	
" 15		N. J. Zinc Co., N. J.	
" 15		do	
" 17		Sparrows Pt., Md.	
" 20		do	
" 24		do	
" 26		do	
" 27		N. J. Zinc Co., N. J.	
" 29		Sparrows Pt., Md.	
Feb. 3		Sparrows Pt., Md.	
" 6		Crown Pt., N. Y.	
" 7		do	
" 7		Sparrows Pt., Md.	
" 8		Crown Pt., N. Y.	
" 8		do	
" 9		Sparrows Pt., Md.	
" 10		Crown Pt., N. Y.	
" 10		do	
" 12		Sparrows Pt., Md.	
" 13		Crown Pt., N. Y.	
" 13		do	
" 14		do	
" 14		Sparrows Pt., Md.	
" 15		Crown Pt., N. Y.	
" 17		Sparrows Pt., Md.	
" 17		Crown Pt., N. Y.	
" 17		do	
" 19		do	
" 20		do	
" 22		do	
" 22		Sparrows Pt., Md.	
" 23		Crown Pt., N. Y.	
" 23		do	
" 24		do	

Mar. 1	Crown Pt., N. Y.
" 2	do
" 3	do
" 6	do
" 7	Sparrows Pt., Md.
" 8	Crown Pt., N. Y.
" 8	Crown Pt., N. Y.
" 10	do
" 12	do
" 12	do
" 13	do
"	do
" 14	do
" 14	do
" 15	do
" 15	do
" 15	do
" 16	do
" 16	do
" 16	do
" 16	Sparrows Pt., Md.
" 19	Crown Pt., N. Y.
" 19	do
" 20	do
" 20	do
" 21	do
" 21	do
" 22	do
" 22	do
" 23	do
" 23	do
" 24	do
" 24	do
" 26	do
" 26	do
" 27	do
" 28	do
" 29	Crown Pt., N. Y.
" 29	do
" 30	do
" 30	do
" 31	do

Schedule.

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"	31	do
"	31	Sparrows Pt., Md.
"	31	do
April	2	Crown Pt., N. Y.
"	2	do
"	3	do
"	3	do
"	4	do
"	6	Sparrows Pt., Md.
"	6	Charlotte, Md.
"	6	Charlotte, Md.
"	7	do
"	7	do
"	9	Sparrows Pt., Md.
"	13	do
"	17	do
"	23	do
"	25	do
"	30	do
"	30	do
May	2	Sparrows Pt., Md.
"	4	do
"	5	do
"	7	do
"	8	do
"	9	do
"	10	do
"	14	do
"	14	do
"	14	do
"	15	do
"	15	do
"	16	do
"	18	do
"	19	do
"	21	do
"	21	do
"	22	do
"	22	do
"	31	do
June	9	Sparrows Pt., Md.
"	9	do

"	13	do
"	13	do
"	15	do
July	5	Sparrows Pt., Md.
"	6	do
"	6	do
"	6	Elkton, Md.
"	9	Sparrows Pt., Md.
"	11	do
"	11	do
"	14	Rising Sun, Md.
"	14	do
"	16	Sparrows Pt., Md.
"	19	do
"	19	do
"	21	do
"	27	do
"	30	do
"	31	do
Oct.	1	Charlottesville, N. J.
"	3	Oxford Fur., N. J.
"	3	Charlottesville, N. J.
"	4	Oxford Furnace, N. J.
"	4	do
"	5	Charlottesville, N. J.
"	6	Oxford Furnace, N. J.
"	8	Charlottesville, N. J.
"	10	do
"	10	do
"	11	Stewartsville, N. J.
"	12	do

INTERSTATE SHIPMENTS—1901

COKE.

DATE.	CONSIGNEE.	DESTINATION.	TONS.
1901.			
Feb. 22		Geneva, N. Y.	
Mar. 4		Rahway, N. J.	

LATROBE COAL COMPANY

INTERSTATE SHIPMENTS OF COAL

From April 1st, 1897, to May 1st, 1901.

INTERSTATE SHIPMENTS—1897

C O A L

DATE.	CONSIGNEE.	DESTINATION.	TONS.
1897.			
April			
	Acct. Samuel H. Rhoades, Phila., Pa.		
	Globe Fireproofing Co.,	Millville, N. J.	100.75
May			
	Acct. Samuel H. Rhoades, Phila., Pa.		
	Globe Fireproofing Co.,	Millville, N. J.	140.
June			
	Acct. Samuel H. Rhoades, Phila., Pa.		
	Budd & Co.,	West Collingswood	23.60
	Globe Fireproofing Co.,	Millville, N. J.	166.35
July			
	Acct. Samuel H. Rhoades, Phila., Pa.		
	Budd & Bro.,	West Collingswood	24.35
	Globe Fireproofing Co.,	Millville, N. J.	88.65
	Acct. Keystone Coal & Coke Company.		
	Erie R. R. Co.,		
	Care J. C. Moorhead,	Youngstown, O.	182.05
	Lake Shore & Mich. Sou. Ry.	do	269.15
	Henderson & Trago,	Cleveland, O.	382.95
	Cuddy Mullen Coal Co.,	do	376.45

August

Acct. Samuel H. Rhoades,		
Phila., Pa.		
Globe Fireproofing Co.,	Millville, N. J.	265.75
Acct. Keystone Coal & Coke		
Company.		
Biggs Boiler Works,	Akron, O.	17.50
F. H. Weeks,	do	55.05
The Sterling Co.,	Barberton, O.	31.20
Cuddy Mullen Coal Co.,	Cleveland, O.	3068.60
Pittsburgh & Chicago		
Gas Coal Co.,	do	211.45
Youngstown Water Co.,	Youngstown, O.	90.80
Union Iron & Steel Co.,	do	308.75
Ohio Steel Co.,	do	234.50
W. L. Scott Co.,	Ashtubula City, O.	109.50
M. A. Hanna & Co.,	Ashtubula Harbor, Ohio	359.15
Grand Rapids & Indiana		
Railroad,	Grand Rapids, Mich.	1214.60

September

Acct. Samuel H. Rhoades,		
Phila., Pa.		
Globe Fireproofing Co.,	Millville, N. J.	336.90
Acct. Keystone Coal & Coke		
Company.		
M. A. Hanna & Co.,	Ashtubula Harbor, O.	2733.25
Ohio Steel Co.,	Youngstown, O.	99.80
Youngstown Electric		
Light Company,	do	41.25
Bornw, Bonnell Iron Co.,	do	640.50
Pittsburgh & Chicago		
Gas Coal Company,	Cleveland, O.	336.15
W. P. Renn,	do	759.85
Cuddy Mullen Coal Co.,	do	1010.55
Ohio & Penna. Coal Co.,	do	66.40
Harry Thompson,	Cuyahoga Falls, O.	44.20

October

Acct. Samuel H. Rhoades,		
Phila., Pa.		
Globe Fireproofing Co.,	Millville, N. J.	348.30

November

Acct. Samuel H. Rhoades, Phila., Pa.	
Globe Fireproofing Co., Millville, N. J.	307.65

December

Acct. Samuel H. Rhoades, Phila., Pa.	
Globe Fireproofing Co., Millville, N. J.	236.05

INTERSTATE SHIPMENTS—1898

COAL

DATE.	CONSIGNEE.	DESTINATION.	TONS.
1898.			
January			
Acct. Samuel H. Rhoades, Phila., Pa.			
Globe Fireproofing Co.,	Millville, N. J.		116.90
February.			
Acct. Samuel H. Rhoades, Phila., Pa.			
Globe Fireproofing Co.,	Millville, N. J.		280.60
March			
Acct. Samuel H. Rhoades, Phila., Pa.			
Globe Fireproofing Co.,	Millville, N. J.		230.30
April			
Acct. Samuel H. Rhoades, Phila., Pa.			
Globe Fireproofing Co.,	Millville, N. J.		93.10
May			
Acct. Samuel H. Rhoades, Phila., Pa.			
Globe Fireproofing Co.,	Millville, N. J.		47.20
June			
Acct. Samuel H. Rhoades, Phila., Pa.			
Globe Fireproofing Co.,	Millville, N. J.		21.90

December

Acct. Samuel H. Rhoades,
Phila., Pa.

Globe Fireproofing Co., Millville, N. J.

154.90

INTERSTATE SHIPMENTS—1899

COAL

DATE.	CONSIGNEE.	DESTINATION.	TONS.
1899.			
January			
	Acct. Latrobe Coal Co.		
	P. W. & B. R. R.,		
	Care C. G. Turner,	Wilmington, Del.	541.20
	Acct. Samuel H. Rhoads,		
	Phila., Pa.		
	Globe Fireproofing Co.,	Millville, N. J.	149.70
	Acct. Vinton Colliery Co.,		
	New York, N. Y.		
	Long Island R. R. Co.,	Long Island City, N. Y.	48.10
	Acct. Columbia Coal Min-		
	ing Co., Phila., Pa.		
	W. H. Bradford,	South Amboy, N. J.	900.60
February			
	Acct. Samuel H. Rhoads,		
	Phila., Pa.		
	Globe Fireproofing Co.,	Millville, N. J.	78.00
	Acct. Vinton Colliery Co.,		
	New York, N. Y.		
	A. T. Burr,	South Amboy, N. J.	579.40
March			
	Acct. Vinton Colliery Co.,		
	New York, N. Y.		
	A. T. Burr,	South Amboy	2038.75
April			
	Acct. Columbia Coal Min-		
	ing Co., Phila., Pa.		
	Delaware River Quarry		
	& Cons. Co.,	Moore's, N. J.	184.

Schedule.

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April

Trenton Abbattoir Co.,	Trenton, N. J.	47.95
Moses, Swam & McLewis		
Co.,	do	24.40
Hills Brewery,	do	24.45
Whitney Glass Works,	Glassboro, N. J.	74.10
M. Guggenhiem Sons,	Maurer, N. J.	76.85
Acct. Vinton Colliery Co.,		
New York.		
A. T. Burr,	South Amboy	766.30

May

Acct. Columbia Coal Min-		
ing Co., Phila., Pa.		
Hills Brewery,	Trenton, N. J.	134.05
Equitable Pottery,	do	23.85
Moses, Swan & McLewis,	do	51.15
Trent Tile Co.,	do	28.00
Enterprise Pottery,	do	52.10
C. V. Hill & Co.,	do	20.50
Empire Rubber Co.,	do	24.50
Delaware River Quarry		
& Cons. Co.,	Moores, N. J.	132.50
B. M. & J. F. Shanley,	Atlantic City, N. J.	28.60

June

Acct. Columbia Coal Min-		
ing Co., Phila., Pa.		
M. Guggenheims Sons,	Perth Amboy, N. J.	4096.75
Hills Brewery,	Trenton, N. J.	70.80
Moses, Swan & McLewis,	Trenton, N. J.	27.90
Delaware River Quarry &		
Cons. Co.,	Moores, N. J.	59.05
Fitchburg Railroad Co.,	Troy, N. Y.	155.85
J. H. Armstrong,	North East, Md.	28.50

July

Acct. Columbia Coal Min-		
ing Co., Phila., Pa.		
M. Guggenheims Sons,	Perth Amboy, N. J.	601.15
Delaware River Quarry &		
Cons. Co.,	Moores, N. J.	181.20
Hills Brewery,	Trenton, N. J.	104.60
C. V. Hill & Co.,	do	31.55

July

Moses, Swan & McLewis,	do	20.00
Boontown Iron & Steel		
Co.,	Boontown, N. J.	30.25
Standard Fireproofing Co.,	Perth Amboy, N. J.	53.40
Henry Thompson,	Wilmington, Del.	20.40
R. A. Downey,	Sodus Point, N. Y.	119.75
Jas. Swift & Co.,	do	336.80

August

Acet. Columbia Coal Min-		
ing Co., Phila., Pa.		
M. Guggenheims Sons,	Perth Amboy, N. J.	493.55
F. Ostrander Brick Co.,	do	98.95
Raritan Copper Works,	do	290.55
Delaware River Quarry &		
Cons. Co.,	Moore's, N. J.	24.55
Moses, Swan & McLewis,	Trenton, N. J.	20.45
Hills Brewery,	do	23.95
Tuckerton R. R. Co.,	Barneget, N. J.	20.75
Jos. Swift & Co.,	Sodus Point, N. Y.	49.65

September

Acet. Columbia Coal Min-		
ing Co., Phila., Pa.		
M. Guggenheims Sons,	Perth Amboy, N. J.	96.00
Ostrander Firebrick Co.,	Ostrander, N. J.	218.65
Delaware River Quarry		
& Cons. Co.,	Moore's, N. J.	53.95
Hills Brewery,	Trenton, N. J.	90.55
Moses, Swan & McLewis,	do	50.75
Henry Thompson,	Wilmington, Del.	24.80

October

Acet. Latrobe Coal Co.		
P. W. & B. R. R.,	Wilmington, Del.	60.40
Acet. Samuel H. Rhoads,		
Phila., Pa.		
Globe Fireproofing Co.,	Millville, N. J.	54.55
Acet. Columbia Coal Min-		
ing Co., Phila., Pa.		
Delaware River Quarry		
& Cons. Co.,	Moore's, N. J.	29.50
Ostrander Firebrick Co.,	Ostrander, N. J.	100.50
Trenton Stone & Con. Co.,	Moore's, N. J.	29.00
Moses, Swan & McLewis,	Trenton, N. J.	89.05

Schedule.

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November

Acct. Samuel H. Rhoads, Phila., Pa.		
Globe Fireproofing Co.,	Millville, N. J.	30.40
Acct. Columbia Coal Min- ing Co., Phila., Pa.		
Delaware River Quarry & Cons. Co.,	Moore's, N. J.	141.70
Ostrander Firebrick Co.,	Ostrander, N. J.	146.35

December

Acct. Samuel H. Rhoads, Phila., Pa.		
Globe Fireproofing Co.,	Millville, N. J.	43.95
Ostrander Firebrick Co.,	Ostrander, N. J.	65.00

INTERSTATE SHIPMENTS—1900

COAL.

DATE.	CONSIGNEE.	DESTINATION.	TONS.
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1900.

January

Acct. Columbia Coal Min- ing Co., Phila., Pa.			
Henrietta Coal Mining Co.,	South Amboy, N. J.	737.05	
Moses, Swan & McLewis,	Trenton, N. J.	22.85	
Globe Fireproofing Co.,	Millville, N. J.	83.30	
M. Dobbins,	Kinkora, N. J.	54.50	
Delaware River Quarry & Cons. Co.,	Moore's, N. J.	28.40	

February

Acct. Latrobe Coal Co.			
P. W. & B. R. R. Co.,	Wilmington, Del.	212.40	
Acct. Columbia Coal Min- ing Co., Phila., Pa.			
Manahawken & Long Beach Transfer Co.,	Branch Haven, N. J.	23.10	
Edison Portland Cement Co.,	Stewartsville, N. J.	30.00	

February

Moses, Swan & McLewis, Trenton, N. J.	25.65
Delaware River Quarry & Cons. Co.,	Moore's, N. J. 58.75
Globe Fireproofing Co.,	Millville, N. J. 28.60

March

Acet. Columbia Coal Min- ing Co., Phila., Pa.	
Delaware River Quarry & Cons. Co.,	Moore's, N. J. 81.90
Moses, Swan & McLewis, Trenton, N. J.	77.65
Perth Amboy Terra Cotta Co.,	Perth Amboy, N. J. 80.95
Henry Maurer & Sons,	do 35.75
W. H. Bradford,	South Amboy, N. J. 83.50

April

Acet. Columbia Coal Min- ing Co., Phila., Pa.	
Delaware River Quarry & Cons. Co.,	Moore's, N. J. 156.65
Henrietta Coal Mining Co.,	South Amboy 208.55

May

Acet. Latrobe Coal Co., Cumberland Valley R. R. Co.,	Hagerstown, Md. 306.65
Acet. Columbia Coal Min- ing Co., Phila., Pa.	
Henrietta Coal Mining Co.,	South Amboy, N. J. 286.40
Delaware River Quarry & Cons. Co.,	Moore's, N. J. 138.05

June

Acet. Latrobe Coal Co. Cumberland Valley Rail- road Co.,	Hagerstown, Md. 1497.40
Acet. Columbia Coal Min- ing Co., Phila., Pa.	
Delaware River Quarry & Cons. Co.,	Moore's, N. J. 141.65

Schedule.

449

July

Acct. Latrobe Coal Co.		
Cumberland Valley R. R.,	Hagerstown, Md.	1246.35
Acct. Columbia Coal Min- ing Co., Phila., Pa.		
Barnegat Steamboat Co.,	Barnegat, N. J.	19.50
Delaware River Quarry & Cons. Co.,	Moorestown, N. J.	98.75

August

Acct. Latrobe Coal Co.		
Cumberland Valley R. R.,	Hagerstown, Md.	1503.35
P. B. Richardson,	Trenton, N. J.	120.65
Manahawken & Long Branch Transfer Co.,	Branch Haven, N. J.	20.30
Acct. Columbia Coal Min- ing Co., Phila., Pa.		
L. H. Hewitt,	Locke, N. Y.	30.80
Chas. H. Springer,	Moravia, N. Y.	24.15
Kirkeville Brick Co.,	Canastota, N. Y.	291.45
Delaware River Quarry & Cons. Co.,	Old Bridge, N. J.	21.20
Delaware River Quarry & Cons. Co.,	Moorestown, N. J.	125.90

September

Acct. Latrobe Coal Co.		
Cumberland Valley R. R.,	Hagerstown, Md.	842.95
Acct. Columbia Coal Min- ing Co., Phila., Pa.		
Delaware River Quarry & Cons. Co.,	Moorestown, N. J.	119.20
Glen Falls Coal Co.,	Glen Falls, N. Y.	53.30

October

Acct. Latrobe Coal Co.		
Cumberland Valley R. R.,	Hagerstown, Md.	1576.15
P. W. & M. R. R.,		
Care J. T. Coleman,	Washington, D. C.	24.50
Acct. Columbia Coal Min- ing Co., Phila., Pa.		
Fulper Pottery Co.,	Flemington, N. J.	27.50
Delaware River Quarry & Cons. Co.,	Moorestown, N. J.	50.80
Henry Thompson,	Wilmington, Del.	33.50

November^a

Acct. Latrobe Coal Co.

Cumberland Valley R. R., Hagerstown, Md.

1485.10

December

Acct. Latrobe Coal Co.

Cumberland Valley R. R., Hagerstown, Md.

2081.95

INTERSTATE SHIPMENTS—1901

COAL.

DATE.	CONSIGNEE.	DESTINATION.	TONS.
1901.			
January			
	Acct. Latrobe Coal Co.,		
	Cumberland Valley R. R., Hagerstown, Md.		1753.70
	Acct. Columbia Coal Min-		
	ing Co., Phila., Pa.		
	Henrietta Coal Mining		
	Company,	South Amboy, N. J.	349.50
February (Nothing)			
March			
	Acct. Columbia Coal Min-		
	ing Co., Phila., Pa.		
	Delaware River Quarry		
	& Cons. Co.,	Moore's, N. J.	113.15
	Delaware River Quarry		
	& Cons. Co.,	Medford, N. J.	21.20
	M. D. Valentine & Bro.,	Woodbridge, N. J.	32.00
	Whitney Glass Works,	Glassboro, N. J.	25.50
April			
	Acct. Columbia Coal Min-		
	ing Co., Phila., Pa.		
	Delaware River Quarry		
	& Cons. Co.,	Moore's, N. J.	147.85
	M. D. Valentine & Bros.		
	Co.,	Valentine, N. J.	31.30
	Whitney Glass Works,	Glassboro, N. J.	32.30

LATROBE COAL COMPANY

INTERSTATE SHIPMENTS OF COKE

From April 1st, 1897, to May 1st, 1901.

INTERSTATE SHIPMENTS—1897

C O K E.

DATE.	CONSIGNEE.	DESTINATION.	TONS.
1897.			
April	Acc't. Latrobe Coal Com- pany, P. W. & B. R. R. Co., c/o J. Lescallett,	Washington, D. C.	492.75
	P. W. & B. R. R. Co.,	Wilmington, Del.	102.55
May	Acc't. Latrobe Coal Com- pany, P. W. & B. R. R. Co., c/o J. Lescallett,	Washington, D. C.	468.60
	P. W. & B. R. R. Co., c/o C. G. Turner,	Wilmington, Del.	116.30
	Acc't. Coxe Bros. & Com- pany, Chicago, Ill., Coxe Bros. & Company, Chicago, Ill.		19.70
	Acc't. Columbia Coal Min. Co., Philadelphia, Pa., Carton Furnace,	Utica, N. Y.	49.30
June	Acc't. Latrobe Coal Com- pany, P. W. & B. R. R. Co., c/o J. Lescallett,	Washington, D. C.	435.35
	P. W. & B. R. R. Co., c/o C. G. Turner,	Wilmington, Del.	81.25

June

Acc't. Coxé Bros. & Co.,	
Chicago, Ill.,	
Coxé Bros. & Company, Chicago, Ill.	60.00
Acc't. Columbia Coal Min.	
Co., Phila., Pa.,	
U. S. Mineral Wool Co., Stanhope, N. J.	33.50

July

Acc't. Latrobe Coal Com-	
pany,	
P. W. & B. R. R. Co.,	
c/o J. Lescallett, Washington, D. C.	511.95
P. W. & B. R. R. Co.,	
c/o C. G. Turner, Wilmington, Del.	112.00
Acc't. Coxé Bros. & Co.,	
Chicago, Ill.,	
Coxé Bros. & Company, Chicago, Ill.	464.75
Acc't. Columbia Coal Min.	
Co., Philadelphia, Pa.	
U. S. Mineral Wool Co., Stanhope, N. J.	41.00

August

Acc't. Latrobe Coal Com-	
pany,	
P. W. & B. R. R. Co.,	
c/o J. Lescallett, Washington, D. C.	519.90
P. W. & B. R. R. Co.,	
c/o C. G. Turner, Wilmington, Del.	97.70
Acc't. Coxé Bros. & Co.,	
Chicago, Ill.,	
Coxé Bros. & Co., Chicago, Ill.	17.00
Acc't. Columbia Coal Min.	
Co., Philadelphia, Pa.	
U. S. Mineral Wool Co., Stanhope, N. J.	51.95
Woodhouse Chain Works, Trenton, N. J.	17.25

September

Acc't. Latrobe Coal Com-	
pany,	
P. W. & B. R. R. Co.,	
c/o J. Lescallett, Washington, D. C.	429.10

Schedule.

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September

P. W. & B. R. R. Co., e/o C. G. Turner,	Wilmington, Del.	78.85
Acc't. Columbia Coal Min. Co., Philadelphia, Pa.,		
U. S. Mineral Wool Co.,	Stanhope, N. J.	16.00

October

Acc't. Latrobe Coal Com- pany,		
P. W. & B. R. R. Co., e/o J. Lescallett,	Washington, D. C.	346.45
P. W. & B. R. R. Co., e/o C. G. Turner,	Wilmington, Del.	76.90
Acc't. Coxe Bros. & Co., Chicago, Ill.,		
Coxe Bros. & Company,	Chicago, Ill.	74.50
Acc't. Columbia Coal Min. Co.,		
U. S. Mineral Wool Co.,	Stanhope, N. J.	20.50
Wm. Woodhouse,	Trenton, N. J.	15.35

November

Acc't. Latrobe Coal Com- pany,		
P. W. & B. R. R. Co., e/o J. Lescallett,	Washington, D. C.	419.60
P. W. & B. R. R. Co., e/o C. G. Turner,	Wilmington, Del.	96.75
Acc't. Coxe Bros. & Co., Chicago, Ill.		41.80
Acc't. Columbia Coal Min. Co., Philadelphia, Pa.		
U. S. Mineral Wool Co.,	Stanhope, N. J.	30.55

December

Acc't. Latrobe Coal Com- pany,		
P. W. & B. R. R. Co., e/o J. Lescallett,	Washington, D. C.	579.35
P. W. & B. R. R. Co., e/o C. G. Turner,	Wilmington, Del.	96.60
Acc't. Coxe Bros. & Co., Chicago, Ill.,		

December

Coxe Bros. & Company, Chicago, Ill.	62.60
Acc't. Columbia Coal Min. Co., Philadelphia, Pa.,	
U. S. Mineral Wool Co., Stanhope, N. J.	56.70

INTERSTATE SHIPMENTS—1898

C O K E.

DATE.	CONSIGNEE.	DESTINATION.	TONS.
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1898.

January

Latrobe Coal Company,			
P. W. & B. R. R. Co.,			
c/o J. Lescalett,	Washington, D. C.	487.30	
P. W. & B. R. R. Co.,			
c/o C. G. Turner,	Wilmington, Del.	110.65	
Acc't. Columbia Coal Min. Co., Philadelphia, Pa.,			
U. S. Mineral Wool Co.,	Stanhope, N. J.	14.80	
Rathbone, Sard & Co.,	Albany, N. Y.	20.50	
Acc't. Coxe Bros. & Co., Chicago, Ills.,			
Coxe Bros. & Co.,	Chicago, Ill.	45.25	
Valparaiso Light & Fuel Company,	Valparaiso, Ind.	16.10	
North Star Iron Works,	Griffith, Ind.	17.50	
Peter Chalmers,	Racine, Wis.	21.00	

February

Latrobe Coal Company,			
P. W. & B. R. R. Co.,			
c/o J. Lescalett,	Washington, D. C.	422.85	
P. W. & B. R. R. Co.,			
c/o C. G. Turner,	Wilmington, Del.	72.50	
Acc't. Columbia Coal Min. Co., Philadelphia, Pa.,			
U. S. Mineral Wool Co.,	Stanhope, N. J.	60.85	
Rathbone, Sard & Co.,	Albany, N. Y.	22.00	

Schedule.

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February

Acc't. Coxe Bros. & Co.,		
Chicago, Ill.,		
Coxe Bros. & Co.,	Chicago, Ill.	24.90
"	Milwaukee, Wis.	38.70
Valparaiso Light & Fuel		
Co.,	Valparaiso, Ind.	22.40

March

Latrobe Coal Company,		
P. W. & B. R. R. Co.,		
e/o J. Lescallett,	Washington, D. C.	447.10
P. W. & B. R. R. Co.,		
e/o C. G. Turner,	Wilmington, Del.	96.90
Acc't. Columbia Coal Min.		
Co., Philadelphia, Pa.,		
U. S. Mineral Wool Co.,	Stanhope, N. J.	22.00
Rathbone, Sard & Co.,	Albany, N. Y.	43.90
Acc't. Coxe Bros. & Com-		
pany, Chicago, Ill.,		
Coxe Bros. & Company,	Chicago, Ill.	15.80
J. H. Harris,	Arlington Heights, Ill.	23.70
Valparaiso Lt. & Fuel Co.,	Valparaiso, Ind.	23.05

April

Latrobe Coal Company,		
P. W. & B. R. R. Co.,		
e/o J. Lescallett,	Washington, D. C.	434.80
P. W. & B. R. R. Co.,		
e/o C. G. Turner,	Wilmington, Del.	95.20
Acc't. Columbia Coal Min.		
Co., Philadelphia, Pa.,		
U. S. Mineral Wool Co.,	Stanhope, N. J.	44.50
Acc't. Coxe Bros. & Co.,		
Chicago, Ill.,		
Valparaiso Lt. & Fuel Co.,	Valparaiso, Ind.	24.75

May

Latrobe Coal Company,		
P. W. & B. R. R. Co.,		
e/o J. Lescallett,	Washington, D. C.	357.60
P. W. & B. R. R. Co.,		
e/o C. G. Turner,	Wilmington, Del.	93.05
Acc't. Columbia Coal Min.		
Co., Philadelphia, Pa.,		

May

U. S. Mineral Wool Co.,	Stanhope, N. J.	24.80
Rathbone, Sard & Co.,	Albany, N. Y.	22.80

June

Acc't. Latrobe Coal Com- pany,		
P. W. & B. R. R. Co.,		
c/o J. Lescallett,	Washington, D. C.	391.65
P. W. & B. R. R. Co.,		
c/o C. G. Turner,	Wilmington, Del.	91.35
Acc't. Columbia Coal Min. Co., Philadelphia, Pa.,		
U. S. Mineral Wool Co.,	Stanhope, N. J.	23.85
Spaulding & Jennings Co.,	West Side Ave., N. J.	29.70
Acc't. Coxe Bros. & Co.,		
Chicago, Ill.,		
Valparaiso Lt. & Fuel Co.,	Valparaiso, Ind.	16.80

July

Acc't. Latrobe Coal Com- pany,		
P. W. & B. R. R. Co.,		
c/o J. Lescallett,	Washington, D. C.	378.75
P. W. & B. R. R. Co.,		
c/o C. G. Turner,	Wilmington, Del.	86.85
Acc't. Columbia Coal Min. Co., Philadelphia, Pa.,		
U. S. Mineral Wool Co.,	Stanhope, N. J.	22.10
Spaulding & Jennings Co.,	West Side Ave., N. J.	22.15
Rathbone, Sard & Co.,	Albany, N. Y.	20.90
Acc't. Coxe Bros. & Co.,		
Chicago, Ill.,		
Coxe Bros. & Co.,	Milwaukee, Wis.	43.50
Valparaiso Lt. & Fuel Co.,	Valparaiso, Ind.	18.85

August

Latrobe Coal Company,		
P. W. & B. R. R. Co.,		
c/o J. Lescallett,	Washington, D. C.	198.45
P. W. & B. R. R. Co.,		
c/o C. G. Turner,	Wilmington, Del.	100.00
Acc't. Columbia Coal Min. Co., Philadelphia, Pa.,		

Schedule.

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August

U. S. Mineral Wool Co.,	Stanhope, N. J.	16.45
Rathbone, Sard & Co.,	Albany, N. Y.	21.40
Acc't. Coxe Bros. & Co.,		
Chicago, Ill.,		
Coxe Bros. & Co.,	Milwaukee, Wis.	17.85

September

Latrobe Coal Company,		
P. W. & B. R. R. Co.,		
c/o J. Lescallett,	Washington, D. C.	371.75
P. W. & B. R. R. Co.,		
c/o C. G. Turner,	Wilmington, Del.	80.95
Acc't. Columbia Coal Min.		
Co., Philadelphia, Pa.,		
U. S. Mineral Wool Co.,	Stanhope, N. J.	28.55
Spaulding & Jennings		
Co.,	West Side Ave., N. J.	22.10

October

Latrobe Coal Company,		
P. W. & B. R. R. Co.,		
c/o J. Lescallett,	Washington, D. C.	444.60
P. W. & B. R. R. Co.,		
c/o C. G. Turner,	Wilmington, Del.	121.85
Acc't. Columbia Coal Min.		
Co., Philadelphia, Pa.,		
U. S. Mineral Wool Co.,	Stanhope, N. J.	63.15
Spauldings & Jennings		
Co.,	West Side Ave., N. J.	15.40
Acc't. Latrobe Coal Co.,		

November

P. W. & B. R. R. Co.,		
c/o J. Lescallett,	Washington, D. C.	356.95
P. W. & B. R. R. Co.,		
c/o C. G. Turner,	Wilmington, Del.	84.25
Acc't. Columbia Coal Min.		
Co., Philadelphia, Pa.,		
U. S. Mineral Wool Co.,	Stanhope, N. J.	38.55
Spaulding & Jennings		
Co.,	West Side Ave., N. J.	21.75
Acc't. Vinton Colliery		
Co., New York, N. Y.,		
Chas. E. Lanning,	Bridgeton, N. J.	19.10

December

Acc't. Latrobe Coal Com-
pany,

P. W. & B. R. R. Co.,

c/o J. Lescallett,

Washington, D. C.

356.00

P. W. & B. R. R. Co.,

c/o C. G. Turner,

Wilmington, Del.

63.95

Acc't. Columbia Coal Min.

Co., Philadelphia, Pa.,

U. S. Mineral Wool Co., Stanhope, N. J.

39.80

Spaulding & Jennings Co., West Side Ave., N. J.

20.30

Acc't. Vinton Colliery

Co., New York, N. Y.,

Chas. E. Lanning,

Bridgeton, N. J.

29.75

INTERSTATE SHIPMENTS—1899

COKE.

DATE.	CONSIGNEE.	DESTINATION.	TONS.
1899.			
January			
Latrobe Coal Company,			
P. W. & B. R. R. Co.,			
c/o J. Lescallett,	Washington, D. C.		460.35
P. W. & B. R. R. Co.,			
c/o C. G. Turner,	Wilmington, Del.		93.50
Acc't. Columbia Coal Min.			
Co., Philadelphia, Pa.,			
U. S. Mineral Wool Co.,	Stanhope, N. J.		38.20
Spauldings & Jennings			
Co.,	West Side Ave., N. J.		37.25
Acc't. Vinton Colliery			
Co., New York, N. Y.,			
Maryland Steel Co.,	Sparrows Point, Md.		1470.65
New Jersey Zinc Co.,	Newark, N. J.		229.05
Swedesboro Glass Co.,	Swedesboro, N. J.		50.40
J. W. Penney & Son	Portland, Maine,		21.65
Sessions Foundry Co.,	Bristol, Conn.		22.70

Schedule.

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February

Latrobe Coal Company,		
P. W. & B. R. R. Co.,		
c/o J. Lescallett,	Washington, D. C.	323.30
P. W. & B. R. R. Co.,		
c/o C. G. Turner,	Wilmington, Del.	56.05
Acc't. Columbia Coal Min.		
Co., Philadelphia, Pa.,		
U. S. Mineral Co.,	Stanhope, N. J.	36.25
Acc't. Vinton Colliery		
Co., New York, N. Y.,		
Maryland Steel Co.,	Sparrows Point, Md.	1044.25
Naugatuck Malleable		
Iron Company,	Union City, Conn.	18.80
Pilgrim Iron Foundry,	Seaside, Mass.	14.50
Walker & Pratt Mfg. Co.,	Union Market, Mass.	19.80
Thompson Mfg. Company,	Manchester, N. H.	21.85

March

Latrobe Coal Company,		
P. W. & B. R. R. Co.,		
c/o J. Lescallett,	Washington, D. C.	308.30
P. W. & B. R. R. Co.,		
c/o C. G. Turner,	Wilmington, Del.	57.85
Acc't. Columbia Coal Min.		
Co., Philadelphia, Pa.,		
U. S. Mineral Wool Com-		
pany,	Stanhope, N. J.	23.00
Spaulding & Jennings Co.,	West Side Ave., N. J.	35.30
Arnold & Co.,	Norwalk, Conn.	22.00
Acc't. Vinton Colliery		
Co., New York, N. Y.,		
Maryland Steel Co.,	Sparrows Point, Md.	2396.75
Empire Drill Co.,	Shortsville, N. Y.	22.40
Swedesboro Glass Works,	Swedesboro, N. J.	19.40
Warren Fdry. & Machine		
Co.,	Phillipsburg, N. J.	18.85
Wm. Bartley & Sons,	Bartley, N. J.	21.75
John D. Steward,	Vineland, N. J.	14.50
The Miller Falls Co.,	Miller Falls, Mass.	24.10
Ames Foundries,	Chickopes, Mass.	24.60

April

Acc't. Latrobe Coal Co.,		
P. W. & B. R. R. Co.,		
c/o J. Lescallett,	Washington, D. C.	355.15
P. W. & B. R. R. Co.,		
c/o C. G. Turner,	Wilmington, Del.	72.15
Acc't. Columbia Coal Min.		
Co., Phila., Pa.,		
U. S. Mineral Wool Co.,	Stanhope, N. J.	95.70
Spaulding & Jennings Co.,	West Side Ave., N. J.	22.50
Acc't. Coxe Bros. & Co.,		
Chicago, Ill.,		
Coxe Bros. & Co.,	Chicago, Ill.	130.40
Acc't. Vinton Colliery		
Co., New York, N. Y.,		
Maryland Steel Co.,	Sparrows Pt., Md.	2626.35
American Steel Castings		
Co.,	Alliance, O.	81.90
Duncan MacKenzie,	Trenton, N. J.	21.00
P. Billingham,	do	21.25
W. R. Thropp,	do	22.35
Swedesboro Glass Works,	Swedesboro, N. J.	18.70
McNeal Pipe & Foundry		
Co.,	Burlington, N. J.	79.30
Geo. D. Harris,	Fitchburg, Mass.	14.80

May

Acct. Latrobe Coal Co.,		
P. W. & B. R. R. Co.,		
c/o J. Lescallett,	Washington, D. C.	477.05
P. W. & B. R. R. Co.,		
c/o C. G. Turner,	Wilmington, Del.	120.20
Acc't. Columbia Coal Min-		
ing Co., Phila., Pa.,		
H. G. Hart,	Salem, N. J.	19.40
Spaulding & Jennings Co.,	West Side Ave., N. J.	14.70
Eastern Carbon Works,	Rahway, N. J.	20.60
Arnold & Co.,	Norwalk, Conn.	14.90
Whitestone Forge & Cons.		
Co.,	Whitestone Ldg., N. Y.	20.00
Acc't. Vinton Colliery		
Co., New York, N. Y.,		
Maryland Steel Co.,	Sparrows Pt., Md.	1367.90

Schedule.

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May

American Steel Casting Co.,	Alliance, O.	96.60
Jas. F. Clark,	Newark, N. J.	22.35
Geo. B. Harris & Co.,	Fitchburg, Mass.	41.90

June

Acc't. Latrobe Coal Co.,		
P. W. & B. R. R. Co.,		
c/o J. Lescallett,	Washington, D. C.	391.90
P. W. & B. R. R. Co.,		
c/o C. G. Turner,	Wilmington, Del.	93.20
Acc't. Columbia Coal Mining Co., Phila., Pa.,		
Eastern Carbon Works,	Rahway, N. J.	134.15
Arnold & Co.,	Norwalk, Conn.	15.65
Acc't. Vinton Colliery Co., New York, N. Y.,		
Maryland Steel Co.,	Sparrows Pt., Md.	856.80
American Steel Castings Company,	Alliance, O.	117.40
Chas. E. Lanning,	Bridgeton, N. J.	22.00
Geo. D. Harris,	Garcher, Mass.	36.80

July

Acc't. Latrobe Coal Co.,		
P. W. & B. R. R. Co.,		
c/o J. Lescallett,	Washington, D. C.	357.30
P. W. & B. R. R. Co.,		
c/o C. G. Turner,	Wilmington, Del.	93.65
Acc't. Columbia Coal Mining Co., Phila., Pa.,		
Eastern Carbon Works,	Rahway, N. J.	38.45
Spaulding & Jennings,	West Side Ave., N. J.	30.65
Arnold & Co.,	Norwalk, Conn.	22.35
Acc't. Vinton Colliery Co., New York City,		
Maryland Steel Co.,	Sparrows Pt., Md.	105.60
American Steel Casting Company,	Alliance, O.	26.50
Geo. D. Harris & Co.,	Syracuse, N. Y.	21.00
Acc't. Coxé Bros. & Co., Inc., Chicago, Ill.,		
American Melting Co.,	Milwaukee, Wis.	36.45

August

Acc't. Latrobe Coal Co.,		
P. W. & B. R. R. Co.,		
c/o J. Lescallett,	Washington, D. C.	432.75
P. W. & B. R. R. Co.,		
c/o C. G. Turner,		
c/o Columbia,	Wilmington, Del.	90.65
New House Sewing Ma-		
chine Co.,	Orange, Mass.	23.20
Arnold & Co.,	Norwalk, Conn.	15.00
Sessions Foundry Co.,	Bristol, Conn.	70.65
Harry G. Hart,	Salem, N. J.	19.25
Spaulding & Jennings,	West Side Ave., N. J.	21.80
Minerva Pig Iron Co.,	Milwaukee, Wis.	84.25
Edward Kelly,	Port Oram, N. J.	232.00
Acc't. Vinton Colliery		
Co., New York, N. Y.,		
Maryland Steel Co.,	Sparrows Pt., Md.	658.85
Acc't. Coxé Bros. & Co.,		
Chicago, Ill.,		
Coxé Bros. & Co.,	Milwaukee, Wis.	44.15

September

Acc't. Latrobe Coal Co.,		
P. W. & B. R. R. Co.,		
c/o J. Lescallett,	Washington, D. C.	435.00
P. W. & B. R. R. Co.,		
c/o C. G. Turner,	Wilmington, Del.	96.20
Acc't. Columbia Coal Min-		
ing Co., Phila., Pa.,		
Maryland Steel Co.,	Sparrows Pt., Md.	39.80
S. T. Conant & Co.,	Newark, N. J.	18.85
Spaulding & Jennings,	West Side Ave., N. J.	20.15
Forum Foundry Mfg. Co.,	Flemington, N. J.	20.65
Sessions Foundry Co.,	Bristol, Conn.	23.40
Richmond Stove Co.,	Norwich, Conn.	21.60
Arnold & Co.,	Norwalk, Conn.	14.85
New Home Sewing Ma-		
chine Co.,	Orange, Mass.	21.50
Dighton Furnace,	Dighton, Mass.	23.50
Acc't. Vinton Colliery		
Co., New York, N. Y.,		

Schedule.

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September

Maryland Steel Co.,	Sparrows Pt., Md.	1087.15
Jas. T. Clark,	Newark, N. J.	19.00
Swedesboro Glass Works,	Swedesboro, N. J.	18.65
Thompson Mfg. Co.,	Manchester, N. H.	20.50
J. W. Penney & Sons,	Portland, Maine	22.15

October

Acc't. Latrobe Coal Co.,		
P. W. & B. R. R. Co.,		
c/o J. Lescallett,	Washington, D. C.	451.45
P. W. & B. R. R. Co.,		
c/o C. G. Turner,	Wilmington, Del.	116.30
Acc't. Columbia Coal Min-		
ing Co., Phila., Pa.,		
Maryland Steel Co.,	Sparrows Pt., Md.	638.45
Richmond Stove Co.,	Norwich, Conn.	104.80
Arnold & Co.,	Norwalk, Conn.	37.25
Turner & Seymour,	Torrington, Conn.	22.40
Easton, Cole & Burnham		
Co.,	Bridgeport, Conn.	21.50
Spaulding & Jennings Co.,	West Side Ave., N. J.	59.90
H. G. Hart,	Salem, N. J.	30.60
S. T. Conant & Son,	Newark, N. J.	23.30
Abendroth Bros.,	Port Chester, N. Y.	22.00
New Home Sewing Ma-		
chine Co.,	Orange, Mass.	23.85
Dighton Furnace Co.,	Dighton, Mass.	24.15
Acc't. Vinton Colliery		
Co., New York,		
Swedesboro Glass Works,	Swedesboro, N. J.	20.20
Geo. D. Harris,	Gardner, Mass.	23.00
Acc't. Coxé Bros. & Co.,		
Chicago, Ill.,		
Coxé Bros. & Co.,	Chicago, Ill.	372.80
do do	Milwaukee, Wis.	44.45
Greenslade Foundry Co.,	do	22.25
King & Andrews Co.,	Chicago Heights, Ill.	88.40
Valparaiso Light & Fuel		
Co.,	Valparaiso, Ind.	21.80

November

Acc't. Latrobe Coal Co.,		
P. W. & B. R. R. Co.,		
c/o J. Lescallett,	Washington, D. C.	426.65
P. W. & B. R. R. Co.,		
c/o C. G. Turner,	Wilmington, Del.	76.60
Acc't. Columbia Coal Min-		
ing Co., Phila., Pa.,		
Maryland Steel Co.,	Sparrows Pt., Md.	635.35
Norwood Engineering		
Co.,	Florence, Mass.	15.65
New Home Sewing Ma-		
chine Company,	Orange, Mass.	22.10
Spaulding & Jennings,	West Side Ave., N. J.	19.60
C. E. Lanning,	Bridgeton, N. J.	20.25
Forum Foundry & Mfg.		
Co.,	Flemington, N. J.	31.80
Acc't. Coxe Bros. & Co.,		
Chicago, Ill.,		
Coxe Bros. & Co.,	Chicago, Ill.	206.70
do	Milwaukee, Wis.	59.15
Valparaiso Light & Fuel		
Company,	Valparaiso, Ind.	23.90

December

Acc't. Latrobe Coal Co.,		
P. W. & B. R. R. Co.,		
c/o J. Lescallett,	Washington, D. C.	419.15
P. W. & B. R. R. Co.,		
c/o C. G. Turner,	Wilmington, Del.	93.45
Acc't. Columbia Coal Min-		
ing Co., Phila., Pa.,		
Maryland Steel Co.,	Sparrows Pt., Md.	585.80
Foren & Abendroth,	Flemington, N. J.	31.00
Chas. E. Lanning,	Bridgeton, N. J.	27.25
S. T. Conant & Son,	Newark, N. J.	21.70
Richmond Stove Co.,	Norwich, Conn.	22.20
Arnold & Co.,	Norwalk, Conn.	21.10
Abendroth Bros.,	Port Chester, N. Y.	21.30
General Chemical Co.,	Syracuse, N. Y.	21.00
Acc't. Coxe Bros. & Co.,		
Chicago, Ill.,		

Schedule.

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December

Coxe Bros. & Co.,	Chicago, Ill.	105.30
do do	Milwaukee, Wis.	22.40
King & Andrews Co.,	Chicago Heights, Ill.	136.45
The Falk Co.,	Milwaukee, Wis.	19.55

INTERSTATE SHIPMENTS—1900

COKE.

DATE.	CONSIGNEE.	DESTINATION.	TONS.
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1900.

January

Acc't. Coxe Bros. & Co.,	Chicago, Ill.,		
Coxe Bros. & Co.,	Chicago, Ill.	583.70	
Milwaukee Malleable			
Gray Iron Co.,	Milwaukee, Wis.	21.95	
Valparaiso Light and			
Fuel Co.,	Valparaiso, Ind.	22.50	
Geo. H. Doane, Agt.,	Racine, Wis.	120.80	
do do	Milwaukee, Wis.	121.20	
Rock Island Brewing Co.,	Rock Island, Ill.	22.25	
Moline Plow Co.,	Moline, Ill.	21.80	

February

Acc't. Columbia Coal Min-			
ing Co., Phila., Pa.,			
Carteret Steel Co.,	Hackettstown, N. J.	263.70	
Spaulding & Jennings Co.,	West Side Ave., N. J.	22.90	
Acc't. Coxe Bros. & Co.,			
Chicago, Ill.,			
Coxe Bros. & Co.,	Chicago, Ill.	85.40	
Coxe Bros. & Co.,	Milwaukee, Wis.	22.65	
Geo. H. Doane, Agt.,	do	721.00	
do do	Racine, Wis.	105.10	
do do	Chicago, Ill.	20.45	
Moline Elevator Co.,	Moline, Ill.	180.95	
Daniels Coal & Coke Co.,	Bradley, Ill.	61.15	

February

Valparaiso Light & Fuel Co.,	Valparaiso, Ind.	18.90
Indianapolis Drop Forge Co.,	Indianapolis, Ind.	21.95
Canton Distilleries Co.,	Baltimore, Md.	20.50
Acc't. Latrobe Coal Company,		
A. Weiskettell,	Baltimore, Md.,	20.15

March

Acc't. Latrobe Coal Company,		
A. Weiskettell & Son,	Baltimore, Md.	19.60
Acc't. Columbia Coal Mining Co., Phila., Pa.,		
Carteret Steel Co.,	Hackettstown, N. J.	639.65
General Chemical Co.,	Troy, N. Y.	54.95
Mfg. Foundry Co.,	Waterbury, Conn.	17.25
Dighton Furnace Co.,	North Dighton, Mass.	21.05
Malleable Iron Works,	New Brighton, Conn.	23.35
H. R. Smith Machine Co.,	Smithville, N. J.	23.15
Foran Fdry. & Mfg. Co.,	Flemington, N. J.	15.30
S. J. Meker,	Newark, N. J.	29.80
Acme Road Machine Co.,	Frankford, N. Y.	22.20
Acc't. Coxe Bros. & Co.,		
Chicago, Ill.,		
Coxe Bros. & Co.,	Chicago, Ill.	170.00
do do	Milwaukee, Wis.	20.85
Geo. H. Doane, Agt.,	do	168.30
do do	Chicago, Ill.	64.55
do do	Racine, Wis.	62.35
Falk Co.,	Milwaukee, Wis.	51.70
Western Malleable Gray Iron Co.,	Milwaukee, Wis.	16.00
Milwaukee Malleable Gray Iron Co.,	do	22.00
Hoffman & Billings Mfg. Co.,	do	23.60
Stamm, Norman & Duffke,		20.45
Valparaiso Light and Fuel Co.,	Valparaiso, Ind.	20.35

Schedule.

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March

Turney Dryer Co.,	Baltimore, Md.	37.35
Indianapolis Drop Forge Company,	Indianapolis, Ind.	38.10

April

Acc't. Columbia Coal Min- ing Co., Phila., Pa.,		
Carteret Steel Co.,	Hackettstown, N. J.	115.65
Charlotte Steel & Iron Co.,	Charlotte, N. Y.	898.00
H.R.Smith Machine Co.,	Smithville, N. J.	20.25
Vacuum Refrigerator Co.,	New Brunswick, N. J.	41.50
Foran Fdry. & Machine Co.,	Flemington, N. J.	68.80
Spaulding & Jennings Co.,	West Side Ave., N. J.	23.75
Dighton Furnace Co.,	North Dighton, Mass.	22.40
Acc't. Coxe Bros. & Co., Chicago, Ill.,		
Coxe Bros. & Co.,	Chicago, Ill.	205.60
do do	Milwaukee, Wis.	21.00
Hoffman & Billings Mfg. Co.,	do	20.95
Milwaukee Malleable Iron Company,	do	15.90
Indianapolis Drop Forge Company,	Indianapolis, Ind.	38.80
Valparaiso Light & Fuel Co.,	Valparaiso, Ind.	22.55
Daniels Coal & Coke Co.,	Bradley, Ill.	43.60
Illinois Car & Equipment Co.,	Hegewisch, Ill.	101.45

May

Acc't. Columbia Coal Min- ing Co., Phila., Pa.,		
General Chemical Co.,	Syracuse, N. Y.	19.00
Manufacturers Fdry. Co.,	Waterbury, Conn.	21.50
Arnold & Co.,	Norwalk, Conn.	22.00
Richmond Stove Co.,	Norwich, Conn.	22.00
Spaulding & Jennings Co.,	West Side Ave., N. J.	15.50
Foran Foundry & Ma- chine Co.,	Flemington, N. J.	45.10

May

H.R. Smith Machine Co.,	Smithville, N. J.	21.80
Armstrong Stove & Mfg. Co.,	Parryville, Md.	55.25
Acc't. Coxe Bros. & Co., Chicago, Ill.,		
Coxe Bros. & Co.,	Chicago, Ill.	120.20
do do	Milwaukee, Wis.	18.50
Rock Island Works,	Rock Island, Ill.	23.30
Indianapolis Drop Forge Co.,	Indianapolis, Ind.	20.30
Valparaiso Light & Fuel Co.,	Valparaiso, Ind.	22.30

June

Acc't. Columbia Coal Min- ing Co., Phila., Pa.,		15.90
General Chemical Co.,	Syracuse, N. Y.	29.65
S. J. Meeker,	Newark, N. J.	22.00
Spaulding & Jennings Co.,	West Side Ave., N. J.	23.00
Arnold & Co.,	Norwalk, Conn.	
Acc't. Humphrey, Stew- art & Co., Pittsburgh, Pa.,		
Emma Furnaces, New- burg, O.,		952.40
Acc't. Goff, Horner & Co., Pittsburgh, Pa.,		
Illinois Steel Co.,	South Chicago, Ill.	63.70
Acc't. Coxe Bros. & Co., Chicago, Ill.,		
Coxe Bros. & Co.,	Chicago, Ill.	191.40
Hansell, Elcock & Co.,		22.90
Manville Covering Co.,	Milwaukee, Wis.	38.15
Valparaiso Light & Fu- el Co.,	Valparaiso, Ind.	18.55

July

Acc't. Columbia Coal Min- ing Co., Phila., Pa.,		
Spaulding & Jennings Co.,	West Side Ave., N. J.	22.50
Manufacturers Foundry Co.,	Waterbury, Conn.	16.00

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July

Acc't. Coxe Bros. & Co.,		
Chicago, Ill.,		
Coxe Bros. & Co.,	Chicago, Ill.	135.70
do do	Milwaukee, Wis.	23.40
W. B. Hosford & Co.,	Burlington, Iowa	22.90
Valparaiso Light & Fuel		
Company,	Valparaiso, Ind.	22.00

August

Acc't. Coxe Bros. & Co.,		
Chicago, Ill.,		
Coxe Bros. & Co.,	Chicago, Ill.	82.55
Hoffman Bros. & Co.,	Milwaukee, Wis.	22.00
Christensen Engineering		
Co.,	do	21.20
Mannville Covering Co.,	do	43.05
Falk Company,	do	22.85

September

Acc't. Columbia Coal Min-		
ing Co., Phila., Pa.,		
Manufacturers Foundry		
Co.,	Waterbury, Conn.	20.25
Acc't. Bessemer Coke Co.,		
Pittsburgh, Pa.,		
Empire Steel & Iron Co.,	Oxford, N. J.	549.65
Dorgeli Bros.,	Manfield, O.	22.80
W. A. Johnson & Son,	Toledo, O.	68.35
Geo. H. Doane, Agt.,	Rock Island, Ill.	82.60
Acc't. Coxe Bros. & Co.,		
Chicago, Ill.,		
Coxe Bros. & Co.,	Milwaukee, Wis.	37.85

October

Acc't. Columbia Coal Min-		
ing Co., Phila., Pa.,		
J. O. Nichols, c/o Vinton		
Colliery Co.,	South Amboy, N. J.	230.30
Spaulding & Jennings Co.,	West Side Ave., N. J.	23.00
Gen. Chemical Co.,	Laurel Hill, L. I., N. Y.	54.10
R. Wallace & Son,	Wellingford, Conn.	16.60
Nichols Chemical Co.,	Capelton, P. G., Canada	49.10

October

Acc't. Bessemer Coke Co., Pittsburgh, Pa., J. O. Nichols, c/o Vinton Colliery Co.,	South Amboy, N. J.	346.15
Acc't. Coxe Bros. & Co., Chicago, Ill., Coxe Bros. & Co.,	Chicago, Ill.	89.65
do do	Milwaukee, Wis.	85.45
Christensen Engineering Co.,	Milwaukee, Wis.	14.90
Clinton Burnham Foun- dry,	do	22.75

November

Acc't. Columbia Coal Min- ing Co., Phila., Pa., Empire Steel & Iron Co., Oxford, N. J.		763.95
Manufacturers Fdry Co., Waterbury, Conn.		15.10
Acc't. Bessemer Coke Co., Pittsburgh, Pa., Vinton Colliery Co.,	South Amboy, N. J.	516.80
Empire Steel & Iron Co., Oxford, N. J.		159.35
Acc't. Coxe Bros. & Co., Chicago, Ill., Coxe Bros. & Co.,	Chicago, Ill.	36.70
do do	Milwaukee, Wis.	44.35
Atlas Foundry Co.,	Chicago, Ill.	22.60

December

Acc't. Columbia Coal Min- ing Co., Phila., Pa., Empire Steel & Iron Co., Oxford, N. J.		317.80
Ellis Yarnall & Son, Ateo, N. J.		25.50
Nicholas Chemical Co., Capelton, P. Q., Canada		37.90
Acc't. Bessemer Coke Co., Pittsburgh, Pa., Empire Steel & Iron Co., Oxford, N. J.		141.05
H. C. Lanabee & Co., Baltimore, Md.		22.00
International Power Co., Providence, R. I.		15.70
Acc't. Coxe Bros. & Co., Chicago, Ill.,		

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December

Milwaukee Malleable Gray Iron Co.,	Milwaukee, Wis.	22.90
Clinton Burnham Foundry,	do	15.95

INTERSTATE SHIPMENTS—1901

C O K E.

DATE.	CONSIGNEE.	DESTINATION.	TONS.
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1901.

January

Acc't. Columbia Coal Mining Co., Phila., Pa.,		
Spaulding & Jennings Co.,	West Side Ave., N. J.	22.50
Gen'l. Chemical Co.,	Syracuse, N. Y.	23.65
Nichols Chemical Co.,	Capelton, P. Q., Canada	90.20
Acc't. Coxe Bros. & Co.,		
Chicago, Ill.,		
Coxe Bros. & Co.,	Chicago, Ill.	200.45

February

Acc't. Columbia Coal Mining Co., Phila., Pa.,		
Irvington Refining & Smelting Co.,	Newark, N. J.	20.80
Gen'l. Chemical Co.,	Syracuse, N. Y.	15.10
Nichols Chemical Co.,	Capelton, P. Q., Canada	52.55
Acc't. Coxe Bros. & Co.,		
Chicago, Ill.,		
Coxe Bros. & Co.,	Chicago, Ill.	512.50
do do	Milwaukee, Wis.	46.05

March

Acc't. Humphreys, Stewart & Co., Pittsburgh, Pa.,		
Illinois Steel Co.,	South Chicago, Ill.	1548.35
Acc't. Coxe Bros. & Co.,		
Chicago, Ill.,		

March

Coxe Bros. & Co.,	Chicago, Ill.	688.45
do do	Milwaukee, Wis.	18.35
Christensen Engineering Co.,	do	38.50
Ft. Wayne Fdry. & Machine Company,	East Chicago, Ind.	348.50
Leidecker Tool Co.,	Marietta, Ohio	24.40

April

Acc't. Columbia Coal Mining Co., Phila., Pa.,		
Spaulding & Jennings Co.,	West Side Ave., N. J.	22.00
Hendricks Bros.,	Soho, N. J.	20.10
Nichols Chemical Co.,	Capelton, P. Q., Canada	43.90
Acc't. Humphreys, Stewart & Co., Pittsburgh, Pa.,		
Illinois Steel Co.,	South Chicago, Ill.	1282.30
Acc't. Coxe Bros. & Co., Chicago, Ill.,		
Coxe Bros. & Co.,	Chicago, Ill.	353.40
do do	Milwaukee, Wis.	78.55
Ft. Wayne Fdry. & Machine Co.,	Chicago, Ill.	177.50
Fort Wayne Fdry. & Machine Co.,	East Chicago, Ill.	177.35
Comstock & Co.,	Comstock, Mich.	43.35

MILLWOOD COAL AND COKE CO.

List of Interstate shipments from April, 1897, to December, 1900:

DATE.	WT. LBS.	DESTINATION.
Oct. 1897	43400	So. Amboy, N. J.
May 1899	208200	Mechanicsville, N. Y.
June "	249100	Boonton, N. J.
Sept. "	760800	So. Amboy, N. J.
Oct. "	1901300	do
Nov. "	349300	do
May 1900	84100	Woodbridge, N. J.

CHARTS

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LARGE

FOR

FILMING

Statement showing shipment of coal made to Interstate points from Altoona Coal & Coke Co., on account of Columbia Coal Mining Co. April 1st, 1897, to May 1, 1901, as taken from statement offered in evidence before Referee and endorsed as follows:

“Shipments of coal from Altoona Coal & Coke Co. on account of the Columbia Coal Mining Co. April 1, 1897, to May 1, 1901. T. F. J. June 20, 1907.”

Date	Consignee	Destination	Tons	Cwt.	Tariff	Settle-
					Rate	ment Rate
1897						
May						
	The Allegheny Co.	Washington, D. C.	24		1.50	
June						
	The Allegheny Co.	Washington, D. C.	148	5	1.50	
July						
	The Allegheny Co.	Waterloo, Va.	27	18	1.50	
	“ “ “	Washington, D. C.	405	4	1.50	
August						
	The Allegheny Co.	Waterloo, Va.	281	3	1.50	
	“ “ “	Washington, D. C.	23	3	1.50	
September						
	Globe Fireproofing Co.,	Clayville, N. J.	62	16	1.50	30c.off
	The Allegheny Co.	Washington, D. C.	78	14	1.50	
October						
	The Allegheny Co.	Washington, D. C.	44	6	1.50	
November						
	The Allegheny Co.	Washington, D. C.	144	19	1.50	
December						
	Robt. Mitchell	South Amboy, N. J.	125	8	1.35	25c.off
	J. A. Roebling & Sons Co.	Trenton, N. J.	190	19	1.60	
	The Allegheny Co.	Washington, D. C.	119	16	1.50	
1898						
January						
	J. A. Roebling & Sons Co.	Trenton, N. J.	293	13	1.60	
	The Allegheny Co.	Washington, D. C.	99	1	1.50	
February						
	J. A. Roebling & Sons Co.	Trenton, N. J.	53	15	1.60	
	The Allegheny Co.	Washington, D. C.	104	8	1.50	

March					
The Allegheny Co.	Washington, D. C.	115	15	1.50	
April					
The Allegheny Co.	Washington, D. C.	116		1.50	
May					
The Allegheny Co.	Washington, D. C.	169		1.50	
June					
The Allegheny Co.	Washington, D. C.	223		1.50	
July					
The Allegheny Co.	Washington, D. C.	215	1	1.50	
August					
The Allegheny Co.	Washington, D. C.	95	2	1.50	
September					
The Allegheny Co.	Washington, D. C.	137	2	1.50	
Henrietta C. M. Co.	New Castle, Del.	29	2	1.50	1.20
" " "	Staten Island, N. Y.	28	10	(1.90*	
				(2.05	
" " "	South Camden, N. J.	53	7	1.50	1.00
Globe Fireproofing Co.	Clayville, N. J.	100	5	1.50	
The Allegheny Co.	Winchester, Va.	23	13	1.50	
October					
The Allegheny Co.	Washington, D. C.	158	14	1.50	
" " "	Rosslyn, Va.	24	6	1.50	
" " "	Clearbrook, Va.	25		1.50	
November					
The Allegheny Co.	Washington, D. C.	194	19	1.50	
" " "	Winchester, Va.	25	8	1.50	
" " "	Rosslyn, Va.	123	2	1.50	
December					
The Allegheny Co.	Washington, D. C.	129	18	1.50	
" " "	Rosslyn, Va.	21		1.50	
1899					
January					
A. S. Edwards	Claymont, Del.	31	6	1.50	
The Allegheny Co.	Washington, D. C.	253	8	1.50	
Henshaw & Lenkhide	Martinsburg, W. Va.	19	11	1.50	
February					
The Allegheny Co.	Washington, D. C.	103	13	1.50	
Miller Supply Co.	Winchester, Va.	318	14	1.50	
Columbia C. M. Co.	So. Amboy, N. J.	381	12	1.35	.90c

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March					
Columbia C. M. Co.	So. Amboy, N. J.	272		1.35	.90c
The Allegheny Co.	Martinsburg, W. Va.	29		1.50	
" " "	Waterloo, Va.	259	14	1.50	
" " "	Washington, D. C.	219	14	1.50	
April					
The Allegheny Co.	Washington, D. C.	196	13	1.10	
May					
The Allegheny Co.	Waterloo, Va.	200	7	1.10	
" " "	Washington, D. C.	282	17	1.10	
June					
The Allegheny Co.	Wilmington, Del.	30	6	1.10	
" " "	Washington, D. C.	173	9	1.10	
July					
The Allegheny Co.	Washington, D. C.	159	1	1.10	
" " "	Frederick Road, Md.	32	15	1.10	
August					
The Allegheny Co.	Wilmington, Del.	59	4	1.10	
H. S. Kerbaugh	Arbutus, Md.	29	14	1.10	
The Allegheny Co.	Washington, D. C.	336	13	1.10	
September					
The Allegheny Co.	Washington, D. C.	193	12	1.10	
" " "	Inwood, W. Va.	26	10	1.25	
" " "	Frederick Road, Md.	25	10	1.10	
November					
The Allegheny Co.	Frederick Road, Md.	31	11	1.10	

Memo:

Bituminous Coal from Clearfield		September 1898		
	thro. Rate	P. R. R.	to Staten Is. Jet.	
Arlington, S. I.,	1.90		1.50	
to				
So. Beach "				
Grasmere, S. I.,	2.05		1.50	
to				
Totenville "				

1900

January					
Henrietta C. M. Co.	So. Amboy, N. J.	275	2	.95	
March					
Henrietta C. M. Co.	So. Amboy, N. J.	85	15	.95	
Wright and Sons	Newark, N. J.	31		1.35	

May					
M. Dobbins	Kinkora, N. J.	80	2	1.65	
Columbia C. M. Co.	So. Amboy, N. J.	530	12	1.30	
July					
M. Dobbins	Kinkora, N. J.	52	14	1.65	
August					
Henrietta C. M. Co.	So. Amboy, N. J.	*1181		1.30	1.30
September					
Henrietta C. M. Co.	So. Amboy, N. J.	1737	8	1.30	1.30
October					
Henrietta C. M. Co.	So. Amboy, N. J.	212		1.30	1.30
1901					
January					
H. S. Kerbaugh	Arbutus, Md.	61	2	1.45	
" " "	Metuchen, N. J.	25	7	1.70	
February					
H. S. Kerbaugh	Arbutus, Md.	26	1	1.45	
" " "	Metuchen, N. J.	52	4	1.70	
March					
H. S. Kerbaugh	Arbutus, Md.	41	15	1.45	
" " "	Metuchen, N. J.	167	10	1.70	
" " "	Frederick Road, Md.	66		1.45	
" " "	Harrison, N. J.	31	6	1.70	
April					
Columbia C. M. Co.	So. Amboy, N. J.	132		1.40	
New England Brick Co.	Mechanicsville, N. J.	80	3		
May					
H. S. Kerbaugh	Metuchen, N. J.	29	12	1.70	
" " "	Frederick Road, Md.	29	4	1.45	
June					
H. S. Kerbaugh	Metuchen, N. J.	25	4	1.70	
July					
H. S. Kerbaugh	Metuchen, N. J.	41	4	1.70	
August					
C. W. R. Comstock	Claymont, Del.	63	6	1.45	
September					
M. Dobbins	Kinkora, N. J.	62	7	1.65	
October					
H. S. Kerbaugh	Mantua, N. J.	84	13	1.60	
G. W. R. Comstock	Claymont, Del.	32	9	1.45	
M. Dobbins	Kinkora, N. J.	42		1.65	

*"Boat frts." allowed.

November

Del. River Const. Co.	Moore, N. J.	64	9	1.70
H. S. Kerbaugh	Mantua, N. J.	25	14	1.60

December

Del. River Const. Co.	Moore, N. J.	34	2	1.70
W. H. Bradford	So. Amboy, N. J.	345	12	1.40
H. S. Kerbaugh	Mantua, N. J.	26	3	1.60
Del. River Const. Co.	Moore, N. J.	34	2	1.70

ALTOONA COAL & COKE COMPANY

INTERSTATE SHIPMENTS—COKE

From April 1897 to May 1901.

Endorsed:

"Altoona Coal & Coke Co. Account Columbia Coal Mining Co., Interstate shipments of Coke from April 1897 to May 1901. T. F. J. June 20, 1907."

INTERSTATE SHIPMENTS—COKE

Date	Consignee	Destination	Tons	Cwt.	Tariff Rate	Settled Rate
1897						
April						
	Whitney Glass Company	Glassboro, N. J.	17	18	1.83	
	Troy Iron & Steel Co.	Troy, N. J.	764	12	2.35	
	Windsor Plow Company	Batavia, N. Y.	19	3	1.90	
	Waterbury Brass Co.	Waterbury, Conn.	28	10	3.10	
	Florence Implement Co.	Florence, Mass.	30	2	3.10	
	R. D. Wood & Co.	Millville, N. J.	29		1.83	
	Hylands & Company	Boston, Mass.	26		3.10	
	Union Implement Works	Lynn, Mass.	275		3.10	
	Sessions Foundry Co.	Bristol, Conn.	17	14	3.10	

May

June

H. B. Husband	Conawago, Md.	17	15	1.55
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July

Port Oram Furnace	Port Oram, N. J.	1720	9	2.04
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August

Port Oram Furnace	Port Oram, N. J.	1724	19	2.04
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September

Port Oram Furnace	Port Oram, N. J.	965		2.04
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October

Port Oram Furnace	Port Oram, N. J.	813	10	2.04
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November

Port Oram Furnace	Port Oram, N. J.	1268	10	2.04
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December

Port Oram Furnace	Port Oram, N. J.	1234	15	2.04
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1898

January

Maryland Steel Co.	Sparrows Pt., Md.	681	6	1.55
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Star Glass Co.,	Milford, N. J.	16	5	1.83
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February

H. B. Husband	Conawingo, Md.	14		1.55
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Maryland Steel Co.	Sparrows Pt., Md.	852	18	1.55
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March

Maryland Steel Co.	Sparrows Pt., Md.	1274		1.55
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April

Maryland Steel Co.	Sparrows Pt., Md.	940	14	1.55
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May

Maryland Steel Co.	Sparrows Pt., Md.	663	17	1.55
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June

Maryland Steel Co.	Sparrows Pt., Md.	904	1	1.55
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July

Maryland Steel Co.	Sparrows Pt., Md.	788	7	1.53
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August

Maryland Steel Co.	Sparrows Pt., Md.	442	8	1.55
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September

Geo. C. Pedue	Flemington, N. J.	16		1.83
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November

E. H. Flood	Atco, N. J.	17	18	1.83
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December

E. H. Flood	Atco, N. J.	15	12	1.83
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Schedule.

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1899

January

Chas. B. Lennig Co.	Birdsboro, Pa.	58	16	1.75
More-Jonas Glass Co.	Bridgeton, N. J.	14		1.83

February

Chas. B. Lennig Co.	Birdsboro, Pa.	62		1.75
More-Jonas Glass Co.	Bridgeton, N. J.	24		1.83

March

Chas. B. Lennig Co.	Birdsboro, Pa.	68	15	1.75
Maryland Steel Co.	Sparrows Pt., Md.	1067	8	1.55

April

Chas. B. Lennig Co.	Birdsboro, Pa.	34	2	(1.75
Maryland Steel Co.	Sparrows Pt., Md.	742	6	(1.45 4-24
New England Copper Co.	Central Falls, R. I.	116	9	3.10

May

Chas. B. Lennig Co.	Birdsboro, Pa.	33	3	1.45
Maryland Steel Co.	Sparrows Pt., Md.	666	1	1.55

June

Chas. B. Lennig Co.	Birdsboro, Pa.	67	12	1.45
Maryland Steel Co.	Sparrows Pt., Md.	705		1.55

July

Chas. B. Lennig Co.	Birdsboro, Pa.	67	5	1.45
Maryland Steel Co.	Sparrows Pt., Md.	713	11	1.55

August

Chas. B. Lennig Co.	Birdsboro, Pa.			1.45
Maryland Steel Co.	Sparrows Pt., Md.	628	8	1.55

September

Maryland Steel Co.	Sparrows Pt., Md.	978	10	1.55
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October

Chas. B. Lennig Co.	Birdsboro, Pa.	32	2	1.45
Maryland Steel Co.	Sparrows Pt., Md.	1369	3	1.55

November

Chas. B. Lennig Co.	Birdsboro, Pa.	66	12	1.45
Maryland Steel Co.	Sparrows Pt., Md.	827	17	1.55
American Lead Pencil Co.	Hoboken, N. J.	16	18	1.75

December

Maryland Steel Co.	Sparrows Pt., Md.	754	12	1.55
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1900

January

Gaynor Glass Co.	Salem, N. J.	26		2.05
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March					
Vineland Glass Co.	Vineland, N. J.	22	7	2.05	
April					
Gaynor Glass Co.	Salem, N. J.	295		2.05	
Vineland Glass Co.	Vineland, N. J.	47	16	2.05	
May					
Vineland Glass Co.	Vineland, N. J.	37	5	2.05	
Cooper & Hewitt	Riegelsville, N. J.	32	15	1.90	
Gaynor Glass Co.	Salem, N. J.	40	9	2.05	
June					
Harrison & Gilmore & Son	Utica, N. Y.	42	19	2.35	
Empire Portland Cement Company	Warren, N. Y. (D.L. & W.)	104	10	2.90	
July					
Ward & Vandergrift	Elm, N. J. (to Winslow Jet. only)	17	12	2.05	
Harrison & Gilmore and Son	Utica, N. Y.	18	10	2.35	
August					
Swedesboro Glass Co., Harrison & Gilmore & Son	Swedesboro, N. J. Utica, N. Y.	24	18	2.05	
Raritan Copper Co.	Perth Amboy, N. J.	102	12	2.05	
American Lead Pencil Co.	Hoboken, N. J.	26	8	2.05	
L. R. & C. J. Clark	Utica, N. Y.	28	18	2.05	
September					
Harrison & Gilmore & Son	Utica, N. Y.	97	7	2.35	
Diamond Drill Co.	Birdsboro, Pa.	17	13	1.75	
October					
Ansonia Refining Co.	Ansonia, Conn.	50	19	3.10	
D. E. Williams & Co.	Perth Amboy	462	18	2.05	
Harrison & Gilmore & Son	Utica, N. Y.	25	5	2.35	
November					
Ansonia Refining Co.	Ansonia, Conn.	39	3	3.10	
D. E. Williams & Co.	Perth Amboy	903	17	2.05	
American Lead Pencil Co.	Hoboken, N. J.	42	10	2.05	
Ellis Yarnell	Utica, N. Y.	51	15	2.35	

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December

Ansonia Refining Co.	Ansonia, Conn.	43	17	3.10
American Lead Pencil Co.	Hoboken, N. J.	22	10	2.05
D. E. Williams & Co.	Perth Amboy, N. J.	888	7	2.05

1901

January

Gaynor Glass Works	Salem, N. J.	24	13	1.75
Harrison Gilmore & Sons	Utica, N. Y.	46	11	2.35
Ellis Yarnell & Son	Atco, N. J.	16	1	1.75
D. E. Williams	Perth Amboy,	1910	19	1.75
Benjamin Ather & Co.	Newark, N. J.	25	13	1.75

February

D. E. Williams	Perth Amboy, N. J.	1005	15	1.75
Benjamin Ather & Co.	Newark, N. J.	45	4	1.75

March

D. E. Williams	Perth Amboy	1106	6	1.75
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April

Fanel Foundry & Machine Company	Ansonia, Conn.	45	6	3.10
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Statement showing shipments of coal made to Interstate points by Latrobe Coal Company on account of Columbia Coal Mining Company, from April 1, 1897, to May 1, 1901, as taken from statement offered in evidence before Referee, endorsed as follows:

“Shipment of coal from Latrobe Coal Co. on account of Columbia Coal Mining Co. T. F. J. June 20, 1907.”

LATROBE COAL COMPANY

SHIPMENTS ACCOUNT OF COLUMBIA COAL MINING COMPANY.

BITUMINOUS COAL.

			Tariff	Settled at Rate
1899 January				
	South Amboy, N. J.	900.60 tons	1.37	.95 net rate
1899 April				
	Moores, N. J.	184.00 “	1.35	
	Trenton, N. J.	96.80 “	1.30	
	Glassboro, N. J.	74.10 “	1.25	
	Maurer, N. J.	76.85 “	1.35	
1899 May				
	Trenton, N. J.	334.15 “	1.30	
	Moores, N. J.	132.50 “	1.35	
	Atlantic City, N. J.	28.60 “	1.60	
1899 June				
	Perth Amboy, N. J.	4096.75 “	1.35	
	Trenton, N. J.	98.70 “	1.30	
	Moores, N. J.	59.05 “	1.35	
	Troy, N. Y.	155.85 “	1.55	
	North East, Md.	28.50 “	1.10	
1899 July				
	Perth Amboy, N. J.	654.55 “	1.35	

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1899 July

Moores, N. J.	181.20	"	1.35
Trenton, N. J.	156.15	"	1.30
Boonton, N. J.	30.25	"	1.70
Wilmington, Del.	20.40	"	1.10
Sodus Point, N. Y.	456.55	"	1.40

1899 August

Perth Amboy, N. J.	883.05	"	1.35
Moores, N. J.	24.55	"	1.35
Trenton, N. J.	44.40	"	1.30
Barneget, N. J.	20.75	"	2.30
Sodus Point, N. Y.	49.65	"	1.40

1899 September

Perth Amboy, N. J.	96.00	"	1.35
Ostrander, N. J.	218.65	"	1.35
Moores, N. J.	53.95	"	1.35
Trenton, N. J.	141.30	"	1.30
Wilmington, Del.	24.80	"	1.10

1899 October

Moores, N. J.	58.50	"	1.35
Ostrander, N. J.	150.00	"	1.35
Trenton, N. J.	89.05	"	1.30

1899 November

Moores, N. J.	141.70	"	1.35
Ostrander, N. J.	146.35	"	1.35

1899 December

Ostrander, N. J.	65.00	"	1.35
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1900 January

Kinkora, N. J.	54.50	"	1.30
South Amboy, N. J.	737.05	"	.95
Trenton, N. J.	22.85	"	1.30
Millville, N. J.	83.30	"	1.25
Moores, N. J.	28.40	"	1.35

1900 February

Stewartsville, N. J.	30.00	"	1.70
Trenton, N. J.	25.65	"	1.30
Moores, N. J.	58.75	"	1.35
Millville, N. J.	28.60	"	1.25

1900 March

Moores, N. J.	81.90	"	1.35
Trenton, N. J.	77.65	"	1.30

1900 March

Perth Amboy, N. J.	116.70	"	1.35
South Amboy, N. J.	83.50	"	95

1900 April

Moore's, N. J.	156.65	"	1.70
South Amboy, N. J.	208.55	"	1.30

1900 May

South Amboy, N. J.	286.40	"	1.30
Moore's, N. J.	138.05	"	1.70

1900 June

Moore's, N. J.	141.65	"	1.70
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1900 July

Moore's, N. J.	98.75	"	1.70
Barnegat City, N. J.	19.50	"	2.65

1900 August

Locke, N. Y.	30.80	"	1.75
Moravia, N. Y.	24.15	"	1.75
Cahastota, N. Y.	291.45	"	1.80
Old Bridge, N. J.	21.20	"	1.70
Moore's, N. J.	125.90	"	1.70

1900 September

Moore's, N. J.	119.20	"	1.70
Glen Falls, N. Y.	53.30	"	2.96

1900 October

Flemington, N. J.	27.50	"	1.85
Moore's, N. J.	50.85	"	1.70
Wilmington, Del.	33.50	"	1.45

1901 January

South Amboy, N. J.	349.50	"	1.30
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1901 March

Moore's, N. J.	113.15	"	1.70
Medford, N. J.	21.20	"	1.85
Woodbridge, N. J.	32.00	"	1.70
Glassboro, N. J.	25.50	"	1.60

1901 April

Moore's, N. J.	147.85	"	1.70
Valentine, N. J.	31.30	"	1.70
Glassboro, N. J.	32.30	"	1.60

Statement showing shipments of coke made to Interstate points by Latrobe Coal Company on account of Columbia Coal Mining Company from April 1, 1897, to May 1, 1901, as taken from statement offered in evidence before Referee and endorsed as follows:

“Shipments of Coke from the Latrobe Coal Co. on account of the Columbia Coal Mining Co. T. F. J. June 20, 1907.”

LATROBE COAL COMPANY

SHIPMENTS ACCOUNT OF COLUMBIA COAL MINING COMPANY.

COKE.

		Tariff Rate	Settle- ment
1897 May			
Utica, N. Y.	49.30	“	2.55
1897 June			
Stanhope, N. J.	33.50	“	2.24
1897 July			
Stanhope, N. J.	41.00	“	2.24
1897 August			
Stanhope, N. J.	51.95	“	2.24
Trenton, N. J.	17.25	“	2.03
1897 September			
Stanhope, N. J.	16.00	“	2.24
1897 October			
Stanhope, N. J.	20.50	“	2.24
Trenton, N. J.	15.35	“	2.03
1897 November			
Stanhope, N. J.	30.55	“	2.24

1897 December			
Stanhope, N. J.	56.70	"	2.24
1898 January			
Stanhope, N. J.	14.80	"	2.24
Albany, N. Y.	20.50	"	2.55
1898 February			
Stanhope, N. J.	60.85	"	2.24
Albany, N. Y.	22.00	"	2.55
1898 March			
Stanhope, N. J.	22.00	"	2.24
Albany, N. Y.	43.90	"	2.55
1898 April			
Stanhope, N. J.	44.50	"	2.24
1898 May			
Stanhope, N. J.	24.80	"	2.24
Albany, N. Y.	22.80	"	2.55
1898 June			
Stanhope, N. J.	23.85	"	2.24
West Side Ave., N. J.	29.70	"	2.24
1898 July			
Stanhope, N. J.	22.10	"	2.24
West Side Ave., N. J.	22.15	"	2.24
Albany, N. Y.	20.90	"	2.55
1898 August			
Stanhope, N. J.	16.45	"	2.24
Albany, N. Y.	21.40	"	2.55
1898 September			
Stanhope, N. J.	28.55	"	2.24
West Side Ave., N. J.	22.10	"	2.24
1898 October			
Stanhope, N. J.	63.15	"	2.24
West Side Ave., N. J.	15.40	"	2.24
1898 November			
Stanhope, N. J.	38.55	"	2.24
West Side Ave., N. J.	21.75	"	2.24
1898 December			
Stanhope, N. J.	39.80	"	2.24
West Side Ave., N. J.	20.30	"	2.24
1899 January			
Stanhope, N. J.	38.20	"	2.24
West Side Ave., N. J.	37.25	"	2.24

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1899 February			
Stanhope, N. J.	36.25	"	2.24
1899 March			
Stanhope, N. J.	23.00	"	2.24
West Side Ave., N. J.	35.30	"	2.24
Norwalk, Conn.	22.00	"	3.30
1899 April			
Stanhope, N. J.	95.70	"	2.24
West Side Ave., N. J.	22.50	"	2.24
1899 May			
Salem, N. J.	19.40	"	1.95
West Side Ave., N. J.	14.70	"	2.24
Rahway, N. J.	20.60	"	1.95
*Whitestone Land- ing, N. Y.	20.00	"	1.95 to J. City only
Norwalk, Ct.	14.90	"	3.30
1899 June			
Rahway, N. J.	134.15	"	1.95
Norwalk, Ct.	15.65	"	3.30
1899 July			
Rahway, N. J.	38.45	"	1.95
West Side Ave., N. J.	30.65	"	2.24
Norwalk, Ct.	22.35	"	3.30
1899 August			
Orange, Mass.	23.20	"	3.30
Norwalk, Ct.	15.00	"	3.30
Bristol, Ct.	70.65	"	3.30
Salem, N. J.	19.25	"	1.95
West Side Ave., N. J.	21.80	"	2.24
Port Oram, N. J.	232.00	"	2.24
Milwaukee, Wis.	84.25	"	2.35
1899 September			
Sparrow's Point, Md.	39.80	"	1.75
Newark, N. J.	18.85	"	1.95
West Side Avenue, N. J.	20.15	"	2.24
Flemington, N. J.	20.65	"	2.03
Bristol, Ct.	23.40	"	3.30
Norwich, Ct.	21.60	"	3.30
Norwalk, Conn.	14.85	"	3.30

*No through rate to Whitestone Landing, N. Y. Tariff rate to J. City 1.95.

1899 September

Orange, Mass.	21.50	"	3.30
Dighton, Mass.	23.50	"	3.30

1899 October

Sparrow's Point, Md.	638.45	"	1.75
Norwich, Ct.	104.80	"	3.30
Norwalk, Ct.	37.25	"	3.30
Torrington, Ct.	22.40	"	3.30
Bridgeton, N. J.	21.50	"	1.95
West Side Ave., N. J.	59.90	"	1.95
Salem, N. J.	30.60	"	1.95
Newark, N. J.	23.00	"	1.95
Port Chester, N. Y.	22.00	"	3.30
Orange, Mass.	23.85	"	3.30
Dighton, Mass.	24.15	"	3.30

1899 November

Sparrow's Point, Md.	635.35	"	1.75
Florence, Mass.	15.65	"	3.30
Orange, Mass.	22.10	"	3.30
West Side Ave., N. J.	19.60	"	1.95
Bridgeton, N. J.	20.25	"	1.95
Flemington, N. J.	31.80	"	1.95

1899 December

Sparrow's Point, Md.	585.80	"	1.75
Flemington, N. J.	31.00	"	1.95
Bridgeton, N. J.	27.25	"	1.95
Newark, N. J.	21.70	"	1.95
Port Chester, N. Y.	21.30	"	3.30
Syracuse, N. Y.	21.00	"	2.25
Norwich, Ct.	22.20	"	3.30
Norwalk, Ct.	21.10	"	3.30

1900 February

Hackettstown, N. J.	263.70	"	2.25
West Side Ave., N. J.	22.90	"	2.25

1900 March

Hackettstown, N. J.	639.65	"	2.25
Troy, N. Y.	54.95	"	2.55
Frankfort, N. Y.	22.20	"	2.55
Smithville, N. J.	23.15	"	2.45
Flemington, N. J.	15.30	"	2.25
Newark, N. J.	29.80	"	2.25

Schedule.

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1900 March

Waterbury, Ct.	17.25	"	3.30
*New Brighton, Ct.	23.35	"	cannot locate
North Dighton, Mass.	21.05	"	3.30

1900 April

Hackettstown, N. J.	115.65	"	2.25
Smithville, N. J.	20.25	"	2.45
New Brunswick, N. J.	41.50	"	2.25
Flemington, N. J.	68.80	"	2.25
West Side Ave., N. J.	23.75	"	2.25
Charlotte, N. Y.	898.00	"	2.13
North Dighton, Mass.	22.40	"	3.30

1900 May

Syracuse, N. Y.	19.00	"	2.25
Waterbury, Ct.	21.50	"	3.30
Norwalk, Ct.	22.00	"	3.30
Norwich, Ct.	22.00	"	3.30
West Side Ave., N. J.	15.50	"	2.25
Flemington, N. J.	45.10	"	2.25
Smithville, N. J.	21.80	"	2.45
Perryville, Md.	55.25	"	2.05

1900 June

Syracuse, N. Y.	15.90	"	2.25
Newark, N. J.	29.65	"	2.25
West Side Ave., N. J.	22.00	"	2.25
Norwalk, Ct.	23.00	"	3.30

1900 July

West Side Ave., N. J.	22.50	"	2.25
Waterbury, Ct.	16.00	"	3.30

1900 September

Waterbury, Conn.	20.25	"	3.30
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1900 October

South Amboy, N. J.	230.30	"	2.25
West Side Ave., N. J.	23.00	"	2.25
*Laurel Hill, L. I., N. Y.	54.10	"	2.25 to J. City only.
Wallingford, Ct.	16.60	"	3.30

*Tariff rate New Britain, Ct., 3.30.

*No through rate to Laurel Hill, L. I., N. Y. Tariff rate to Jersey City, 2.25.

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Schedule.

1900 October

**Capelton, P. Q.	49.10		
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1900 November

Oxford, N. J.	763.95	"	2.25
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Waterbury, Ct.	15.10	"	3.30
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1900 December

Oxford, N. J.	317.80	"	2.25
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Ateo, N. J.	25.50	"	2.25
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**Capelton, P. Q.	37.90	"	2.55 to Mechanics-
			ville, N. Y.

1901 January

West Side Ave., N. J.	22.50	"	1.95
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Syracuse, N. Y.	23.65	"	2.25
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**Capelton, P. Q.	90.20	"	2.55 to Mechanics-
			ville, N. Y.

1901 February

Newark, N. J.	20.80	"	1.95
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Syracuse, N. Y.	15.10	"	2.25
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**Capelton, P. Q.	52.55	"	2.55 to Mechanics-
			ville, N. Y.

1901 April

West Side Ave., N. J.	22.00	"	1.95
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Soho, N. J.	20.10	"	2.24
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**Capelton, P. Q.	43.90	"	2.55 to Mechanics-
			ville, N. Y.

**No through rate to Capelton, P. Q. Tariff rate to Mechanics-ville, 2.55

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

No. 4. April Session, 1905.

MITCHELL COAL & COKE COMPANY,
vs.
THE PENNSYLVANIA RAILROAD COMPANY.

REQUEST FOR COUNSEL FEE.
Filed April 2, 1910.

And now, to wit, this 2d day of April, A. D. 1910, George S. Graham, attorney for plaintiff in the above case, comes into court and requests the court to allow him the sum of Five thousand dollars as attorney's fee in the above case, and requests that the same shall be taxed and collected as part of the costs of the case.

GEORGE S. GRAHAM.

IN THE
CIRCUIT COURT OF THE UNITED STATES.
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

No. 4. April Session, 1905.

MITCHELL COAL & COKE COMPANY,
vs.
THE PENNSYLVANIA RAILROAD COMPANY.

STIPULATION.

1. It is agreed that the shipments of coal and coke from the mines of the plaintiff after March 14, 1899 (excepting those made from its Gallitzin Mine between October 1, 1899, and April 30, 1901), to points outside the State of Pennsylvania aggregated 258,404 tons of coal and 126,267 tons of coke. Of the tonnage thus shipped 118,393 tons of coal and 3,619 tons of coke were shipped by the plaintiff and the freight on the same was paid by it and 140,011 tons of coal and 122,648 tons of coke were sold by the plaintiff to purchasers who bought the coal and coke F. O. B. the mines.

2. The shipments of coal and coke made from the Gallitzin Mine of the plaintiff between October 1, 1899, and April 30, 1901, to points outside the State of Pennsylvania aggregated 93,259 tons of coal and 41,496 tons of coke. Of the tonnage thus shipped 18,935 tons of coal and 5,173 tons of coke were shipped by the plaintiff and the freight on the same was paid by it, and 74,324 tons of coal and 36,323 tons of coke were sold by the plaintiff to purchasers who bought the coal and coke F. O. B. the mines.

3. The shipments of coal and coke made from the mines of the plaintiff between April 1st, 1897, and March 14th, 1899, to points outside the State of Pennsylvania were 148,835 tons of coal and 137,946 tons of coke. Of the tonnage thus shipped 73,426 tons of coal and 19,179 tons of coke were shipped by the plaintiff and the freight on the same paid by it, and 75,409 tons of coal and 118,767 tons of coke were sold by the plaintiff to purchasers who bought the coal and coke F. O. B. the mines.

4. The shipments of coal and coke made between March 1, 1899, and April 30, 1901, to points outside the State of Pennsylvania, from the mines of the Altoona Coal and Coke Company, the Glen White Coal and Lumber Company, The Millwood Coal and Coke Company, the Latrobe Coal Company and the Bolivar Coal and Coke Company, whether by the companies themselves, or by purchasers F. O. B. the mines were respectively as follows:

	Tons of Coal	Tons of Coke
Altoona Coal and Coke Company.....	11,059	17,983
Glen White Coal and Lumber Company	6,683	42,516
Millwood Coal and Coke Company....	1,586	
Latrobe Coal Company.....	28,721	37,695
Bolivar Coal and Coke Company.....		4,158

5. Of the coal shipped by the plaintiff after March 14, 1899 (excluding that shipped by it from its Gallitzin Mine between October 1, 1899, and April 30, 1901), to points outside the State of Pennsylvania, 11,735 tons were transported by the defendant, either alone or in conjunction with other carriers, to points and in months to and in which the coal was transported from the mines of the Latrobe Coal Company. The shipments thus transported from the mines of the Latrobe Company aggregated 5491 tons, made up of 2414 tons shipped by the Columbia Coal Mining Company, and

3077 tons shipped either by the Latrobe Company itself or by purchasers of the coal from it.

The following table shows the shipments made:

	Mitchell Co's. shipments	AMOUNT SHIPPED	
		Shipments from Latrobe Company's Mines	
		By Latrobe Co. or others.	By Columbia Company.
	Tons	Tons	Tons
Ostrander, N. J.....	161	.....	319
South Amboy, N. J..	11,473	2,805	1,644
Trenton, N. J.....	52	.....	431
Wilmington, Del....	49	272	.....
	<hr/> 11,735	<hr/> 3,077	<hr/> 2,394

Of the 11,735 tons shipped by the plaintiff, 1674 tons were shipped in months in which the defendant was engaged in transporting to the same destination the 3077 tons above mentioned.

6. Of the coal shipped by the plaintiff from its Galitzin Mine between October 1, 1899, and April 30, 1901, to points outside the State of Pennsylvania, 4423 tons were transported by the defendant to points and in months to and in which coal was transported by it from the mines of either the Altoona Coal and Coke Company, the Glen White Coal and Lumber Company, or the Millwood Coal and Coke Company.

The shipments thus transported from the mines of the Altoona Coal and Coke Company aggregated 4053 tons, from the mines of the Millwood Coal and Coke Company, 1005 tons, and from the mines of the Glen White Coal and Lumber Company, 346 tons. The following table shows the shipments made:

DESTINATION OF SHIPMENTS	AMOUNT SHIPPED			
	Mitchell Co.'s ship- ments from Gal- litzin Mine	Shipments from Al- toona Coal & Coke Co. Mines	Shipments from Glen White Coal & Lumber Co. Mines	Shipments from Mill- wood Coal & Coke Co. Mines
	Alt'a Columbia			
	Tons	Tons	Tons	Tons
Newark, N. J.....	18	31	...	....
South Amboy, N. J.	4,405	4,022	346	1,005
Totals	4,423	4,053	346	1,005

Of the 4423 tons shipped as above by the plaintiff, 62 tons were shipped in months in which shipments were made from the Millwood Coal and Coke Company's mines, 292 tons in months in which shipments were made from the Glen White Coal and Lumber Company's mines, and the balance in months in which shipments were made by the Columbia Coal Mining Company from the mines of the Altoona Coal and Coke Company.

7. No portion of the coke shipped by the plaintiff after March 14, 1899 (excluding that shipped by it from its Gallitzin Mine between October 1, 1899, and April 30, 1901), to points outside the State of Pennsylvania was transported by the defendant either alone or in conjunction with other carriers to points to which in the same months coke was transported from the mines of either the Latrobe Coal Company or the Boli-var Coal and Coke Company.

8. Of the coke shipped by the plaintiff from its Gallitzin Mine between October 1, 1899, and April 30, 1901, to points outside the State of Pennsylvania, 40 tons were transported by the defendant to points and in months to and in which coke was transported from

the mines of either the Altoona Coal & Coke Company or the Glen White Coal & Lumber Company.

Of the 40 tons shipped by the plaintiff, 23 tons were shipped in months in which shipments were made from the mines of the Altoona Coal & Coke Company, and 17 tons in months in which shipments were made from the mines of the Glen White Coal & Lumber Company.

The following table shows the shipments made:

DESTINATION OF SHIPMENTS	AMOUNT SHIPPED		
	Mitchell Company's	Altoona Company's	Glen White Company's
	shipments Tons	shipments Tons	shipments Tons
Newark, N. J.....	23	19	..
Vineland, N. J.....	17	..	22
	—	—	—
Totals	40	19	22

GEORGE S. GRAHAM,
Attorney for Plaintiff.

FRANCIS I. GOWEN,
Attorney for Defendant.

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

No. 4. April Session, 1905.

MITCHELL COAL & COKE COMPANY,
vs.
THE PENNSYLVANIA RAILROAD COMPANY.

STIPULATION.

For the purpose of the above case only it is hereby stipulated and agreed by and between counsel for said parties:

(1) That of 73,426 tons of coal and 19,179 tons of coke, shipped by the plaintiff from its mines over the lines of defendant, from April 1, 1897, to March 14, 1899, on which freights were paid by plaintiff, 70 per cent. of such tonnage of coal and 70 per cent. of such tonnage of coke were shipped at the rates quoted by the defendant, as detailed in the testimony, and 30 per cent. of such tonnage of coal and 30 per cent. of such tonnage of coke were shipped at the published tariff rates, as detailed in the testimony.

(2) That on 3051 tons of coal and 1135 tons of coke shipped by the plaintiff from its mines over the lines of the defendant, from March 14, 1899, to April 1, 1899, plaintiff paid the freight, and 70 per cent. of such tonnage of coal and 70 per cent. of such tonnage of coke were shipped at the rates quoted by defendant, as detailed in the testimony, and 30 per cent. of such ton-

nage of coal and 30 per cent. of such tonnage of coke were shipped at the published tariff rates, as detailed in the testimony.

GEORGE S. GRAHAM,
Attorney for Plaintiff.

FRANCIS I. GOWEN,
Attorney for Defendant.

Attest:

JOHN C. GILPIN.

This stipulation is signed at the request of counsel for the plaintiff. It is not to be inferred from the defendant's assent to the facts therein stated that it assents to the legal sufficiency or materiality of these for any purpose or that it waives any right to object to the legal insufficiency of the plaintiff's proofs, though supplemented by this stipulation, to establish all the facts incumbent upon it in relation to its shipments, the rates paid thereon, or any other essential fact relating thereto or connected therewith.

FRANCIS I. GOWEN.

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

No. 4. April Session, 1905.

MITCHELL COAL & COKE COMPANY,
vs.
THE PENNSYLVANIA RAILROAD COMPANY.

STIPULATION.

And now, to wit, February 27th, 1909, it is hereby stipulated and agreed by and between counsel for the above parties, for the purposes of this case only, that the Referee shall find the following facts:

(1) That from all the mines of the plaintiff concerned in this suit (except Gallitzin Mine from October 1, 1899, to April 30, 1901), the plaintiff shipped over the lines of the Pennsylvania Railroad to points without the State of Pennsylvania, during the period from March 14, 1889, to April 1, 1899, 3121 gross tons of coal and paid the freight on the same, and 688 gross tons of coal F. O. B. the mines, and during the period from April 1, 1899, to April 30, 1901, also shipped as aforesaid, to points without the State of Pennsylvania 115,272 gross tons of coal and paid the freight on the same, and 139,323 gross tons of coal F. O. B. the mines.

(2) That from all the mines of the plaintiff concerned in this suit (except Gallitzin Mine from October 1, 1899, to April 30, 1901), the plaintiff shipped over the lines of the Pennsylvania Railroad to points with-

out the State of Pennsylvania, during the period from March 14, 1899, to March 31, 1900, 3437 net tons of coke and paid the freight on the same, and 60,219 net tons of coke F. O. B. the mines, and during the period from March 31, 1900, to April 30, 1901, also shipped as aforesaid, to points without the State of Pennsylvania, 182 net tons of coke and paid the freight on the same, and 62,429 net tons of coke F. O. B. the mines.

(3) That from the Gallitzin mine the plaintiff shipped over the lines of the Pennsylvania Railroad to points without the State of Pennsylvania, during the period from October 1, 1899, to March 31, 1900, 3307 net tons of coke and paid the freight on the same, and 17,604 net tons of coke F. O. B. the said mine, and also shipped as aforesaid, to points without the State of Pennsylvania, during the period from March 31, 1900, to April 30, 1901, 1866 net tons of coke and paid the freight on the same, and 18,719 net tons of coke F. O. B. the said mine.

(4) The above figures are summarized in a table hereto annexed, in which the figures to which red ticks are appended have been heretofore agreed upon by stipulation signed and filed.

GEORGE S. GRAHAM,

By JOHN C. GILPIN,
Attorney for Plaintiff.

FRANCIS I. GOWEN,

Attorney for Defendant.

The above stipulation has been signed at the request of the plaintiff. It is not to be understood that the defendant by assenting to the correctness of the figures embraced therein admits anything more than that, as a matter of fact, the division of shipments shown therein as between certain dates may be accepted as correct.

FRANCIS I. GOWEN.

Stipulation.
INTERSTATE.

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COAL.

All mines (except Gallitzin 10-1-99 to 4-30-01)	Fr. pp	f. o. b. mines
3-14-99 to 4-1-99	3121 gr. tons	688 gr. tons
4-1-99 to 4-30-01	115272 "	139323 "
	<hr/>	<hr/>
	118393 "	140011 "
Gallitzin 10-1-99 to 4-30-01	18935 "	74324 "

COKE.

All mines (except Gallitzin 10-1-99 to 4-30-01)		
3-14-99 to 3-31-00	3437 net tons	60219 net tons
3-31-00 to 4-30-01	182 "	62429 "
	<hr/>	<hr/>
	3619 "	122648 "
Gallitzin 10-1-99 to 4-30-01		
10-31-99 to 3-31-00	3307 "	17604 "
3-31-00 to 4-30-01	1866 "	18719 "
	<hr/>	<hr/>
	5173 "	36323 "

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Session, 1905. No. 4.

MITCHELL COAL AND COKE COMPANY
vs.
PENNSYLVANIA RAILROAD COMPANY.

STIPULATION.

And now, to wit, April 19th, 1909, it is hereby stipulated and agreed by and between counsel for the above parties, for the purposes of this case only, that the Referee shall find the following facts:

(1) That the Pennsylvania Railroad Company's published tariff rates per gross ton of 2240 pounds, during the years 1897, 1898, 1899, 1900 and 1901, for the shipment of coal over the lines of the Pennsylvania Railroad Company and its connections, in carload lots, from the mines of the plaintiff to the various points outside the State of Pennsylvania are set forth in a schedule hereto attached, marked "Exhibit A" and made part hereof, the rate to any point mentioned being set opposite the name of the destination, and the year in which said rate was effective is designated at the top of the column in which the figures of said rate are found.

(2) That the Pennsylvania Railroad Company's published tariff rates per net ton of 2000 pounds during the years 1897, 1898, 1899, 1900 and 1901, for the

shipment of coke over the lines of the Pennsylvania Railroad Company and its connections, in carload lots, from the mines of the plaintiff to the various points outside the State of Pennsylvania, are set forth in a schedule hereto attached, marked "Exhibit B," and made part hereof, the rate to any point mentioned being set opposite of the name of the destination, and the year in which said rate was effective is designated at the top of the column in which the figures of said rate are found.

GEORGE S. GRAHAM,
Attorney for Plaintiff.

FRANCIS I. GOWEN,
Attorney for Defendant.

EXHIBIT "A".**COAL
INTERSTATE.**

	4-1-1897	4-1-1899	8-1-1899	4-1-1900	4-1-1901
Absecon, N. J.	1.75 gr.	1.60 gr.	1.60 gr.	1.95 gr.	1.95 gr.
Amherst, Mass.	No through rates				
Alpha, N. J.	1.65 gr.	1.35 gr.	1.35 gr.	1.70 gr.	1.70 gr.
	4-22-99				
Athenia, N. J.		1.70 gr.	1.65 gr.	1.65 gr.	2.00 gr.
Allenhurst, N. J.	1.70 gr.	1.60 gr.	1.60 gr.	1.95 gr.	1.95 gr.
	5-16-99				
Akron, Ohio	1.50 net				
Ashland, N. H.	No through rates				
Alloway, N. J.	1.50 gr.	1.25 gr.	1.25 gr.	1.60 gr.	1.60 gr.
Adams, Mass.	No through rates				
	4-24-99				
Ansonia, Conn.	2.50 gr.	2.30 gr.	2.30 gr.	2.30 gr.	2.60 gr.
Atlantic City, N. J.	1.75 gr.	1.60 gr.		1.60 gr.	1.95 gr.
Ashburnham, Mass.	No through rates				
Albany, N. Y.	1.80 gr.	1.55 gr.		1.55 gr.	1.85 gr.
	4-24-99				
Ashley Falls, Mass.	2.55 gr.	2.30 gr.	2.30 gr.	2.30 gr.	2.60 gr.
Athol, Mass.	No through rates				
Barnegat City, N. J.	2.40 gr.	2.30 gr.		2.30 gr.	2.65 gr.
Boonton, N. J.	1.85 gr.	1.70 gr.		1.70 gr.	2.05 gr.
Bayonne, N. J.	1.70 gr.	1.35 gr.		1.35 gr.	1.70 gr.
Belair, Md.	2.00 gr.	1.90 gr.		1.90 gr.	2.25 gr.
Bound Brook, N. J.	1.70 gr.	1.35 gr.		1.35 gr.	1.70 gr.
Bakersville, N. J.	1.75 gr.	1.60 gr.		1.60 gr.	1.95 gr.
	4-24-99				
Berlin, Conn.	2.80 gr.	2.55 gr.	2.55 gr.	2.55 gr.	2.85 gr.
	5-16-99				
Bloomville, Ohio	1.55 net				
Berlin, L. I.	Cannot locate				

Belleville, Ohio						
Bentley, Md.	1.50 gr.	1.10 gr.		1.10 gr.	1.45 gr.	1.45 gr.
Brookfield, Mass.	No through rates					
Butteville, N. J.	Cannot locate					
Bemis, Mass.	No through rates					
Baltimore, Md.	1.50 gr.	1.10 gr.		1.10 gr.	1.45 gr.	1.45 gr.
	4-24-99					
Bethel, Conn.	2.55 gr.	2.30 gr.	2.30 gr.	2.30 gr.	2.60 gr.	2.60 gr.
Bristol, R. I.	No through rates					
Bondsville, Mass.	"	"	"			
Braintree, Mass.	"	"	"			
Bellville, N. J.	1.80 gr.	1.65 gr.		1.65 gr.	2.00 gr.	2.00 gr.
Burlington, N. J.	1.60 gr.	1.30 gr.		1.30 gr.	1.65 gr.	1.65 gr.
Boston, Mass.	No through rates					
Breesport, ⁴ N. Y.	1.70 gr.	1.40 gr.		1.45 gr.	1.75 gr.	1.75 gr.
Berkshire, N. Y.	1.75 gr.	1.45 gr.		1.45 gr.	1.75 gr.	1.75 gr.
Brooklyn, Ohio	4-24-99					
Branchville, Conn.	2.55 gr.	2.30 gr.	2.30 gr.	2.30 gr.	2.60 gr.	2.60 gr.
Bayway, N. J.	1.70 gr.	1.35 gr.		1.35 gr.	1.70 gr.	1.70 gr.
Columbus, N. J.	1.75 gr.	1.45 gr.		1.45 gr.	1.80 gr.	1.80 gr.
Cortland, N. Y.	1.70 gr.	1.45 gr.		1.45 gr.	1.75 gr.	1.75 gr.
Comeant, Conn.	Cannot locate					
Coatesville, Ind.	5-16-99					
Clayton, N. J.	1.50 gr.	1.25 gr.		1.25 gr.	1.60 gr.	1.60 gr.
Canton, Balto.	1.50 gr.	1.10 gr.		1.10 gr.	1.45 gr.	1.45 gr.
	5-16-99					
Converse, Ind.	1.75 net					
Clayton, Del. (P.B.&W.)	2.00 gr.	1.75 gr.		1.75 gr.	2.10 gr.	2.10 gr.
Claymont, Del.	1.50 gr.	1.10 gr.		1.10 gr.	1.45 gr.	1.45 gr.
Collingswood, N. J.	1.50 gr.	1.25 gr.		1.25 gr.	1.60 gr.	1.60 gr.
Clayville, N. J.	1.50 gr.	1.25 gr.		1.25 gr.	1.60 gr.	1.60 gr.
Calverton, Md.	1.50 gr.	1.10 gr.		1.10 gr.	1.45 gr.	1.45 gr.
Cuyler, N. Y.	1.70 gr.	1.45 gr.		1.45 gr.	1.80 gr.	1.80 gr.
	6-26-99					
Chesterton, Md.			2.00 gr.	2.00 gr.	2.35 gr.	2.35 gr.
Charlottesville,						
June, N. J.	2.10 gr.	2.10 gr.		2.10 gr.	2.45 gr.	2.30 gr.

Camden, N. J.	1.50 gr.	1.10 gr.		1.10 gr.	1.45 gr.	1.45 gr.
			5-16-99			
Chicago, Ills.			1.75 net			
Cleveland, Ohio			1.50 net			
Carlton, Hill, N. J.	1.80 gr.	1.65 gr.		1.65 gr.	2.00 gr.	2.00 gr.
Cairo, Ill.			3.25 gr.			
Constable Hook, N. J.	1.70 gr.	1.35 gr.		1.35 gr.	1.70 gr.	1.70 gr.
Concord, N. H.	No through rates					
Carteret, N. J.	1.70 gr.	1.35 gr.		1.35 gr.	1.70 gr.	1.70 gr.
Cliffwood, N. J.	1.70 gr.	1.60 gr.		1.60 gr.	1.95 gr.	1.95 gr.
	12-28-97					
Carlstadt, N. J.	1.80 gr.	1.65 gr.		1.65 gr.	2.00 gr.	2.00 gr.
			4-24-99			
Conway, Mass.	2.90 gr.	2.60 gr.	2.60 gr.	2.60 gr.	2.90 gr.	2.90 gr.
Concordville, Mass.	Cannot locate					
Concord Junc., Mass.	No through rates					
Claremont, N. H.	"	"	"			
Canestota, N. Y.	1.70 gr.	1.45 gr.		1.45 gr.	1.80 gr.	1.80 gr.
Canandaigua, N. Y.	1.65 gr.	1.40 gr.		1.40 gr.	1.70 gr.	1.70 gr.
Cromwell, Conn.	2.90 gr.	2.65 gr.	2.65 gr.	2.65 gr.	2.95 gr.	2.95 gr.
Chambly Canton, Que.	No through rates					
Chelsea, Mass.	"	"	"			
Claremont Junc., N.H.	"	"	"			
Chatham, Mass.	"	"	"			
Chatham, N. Y.	3.85 gr.	3.35 gr.		3.10 gr.	3.40 gr.	3.40 gr.
Cedar Grove, N. J.						
	11-17-97	2.20 gr.	1.75 gr.	1.75 gr.	2.10 gr.	2.10 gr.
Campello, Mass.	No through rates					
Concord, Mass.	"	"	"			
Canan, Conn.	2.55 gr.	2.30 gr.	2.30 gr.	2.30 gr.	2.60 gr.	2.60 gr.
			4-24-99			
Delair, N. J.	1.50 gr.	1.10 gr.		1.10 gr.	1.45 gr.	1.45 gr.
Delmar, Del.	2.30 gr.	2.30 gr.		2.30 gr.	2.65 gr.	2.65 gr.
Danbury, Conn.	2.55 gr.	2.30 gr.	2.30 gr.	2.30 gr.	2.60 gr.	2.60 gr.
			4-25-99			
Dover, N. J.	1.75 gr.	1.75 gr.	1.70 gr.	1.70 gr.	2.05 gr.	1.90 gr.
Deering, Ill.						
			5-16-99			

Schedule.

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Dayton, Ohio			1.55 net			
Dennison, Ohio			1.50 "			
				6-17-99		
Detroit, Mich.			1.75 "	1.70		
Dublin, Ohio						
				8-1-1899		
DeRuyter, N. Y.	1.70 gr.	1.45 gr.		1.45 gr.	1.80 gr.	1.80 gr.
Dundee, N. J.	1.80 gr.	1.65 gr.		1.65 gr.	2.00 gr.	2.00 gr.
.....				4-24-99		
Delawanna, N. J.	1.85 gr.	1.70 gr.	1.65 gr.	1.65 gr.	2.00 gr.	2.00 gr.
Dalton, Mass.	No through rates					
Dryden, N. Y.	1.75 gr.	1.45 gr.		1.45 gr.	1.75 gr.	1.75 gr.
.....				5-16-99		
Dubuque, Ia.			2.65 net			
Daretown, N. J.	1.50 gr.	1.25 gr.		1.25 gr.	1.60 gr.	1.60 gr.
Denton, Md.	1-12-08					
	2.30 gr.	2.30 gr.		2.30 gr.	2.65 gr.	2.65 gr.
Edison, N. J.	2.00 gr.	2.00 gr.		2.00 gr.	2.35 gr.	2.20 gr.
Elizabeth, N. J.	1.70 gr.	1.35 gr.		1.35 gr.	1.70 gr.	1.70 gr.
Elmira, N. Y.	1.30 gr.	1.10 gr.		1.10 gr.	1.40 gr.	1.40 gr.
Elkton, Md.	1.50 gr.	1.10 gr.		1.10 gr.	1.45 gr.	1.45 gr.
East Homer, N. Y.	1.70 gr.	1.45 gr.		1.45 gr.	1.75 gr.	1.75 gr.
East Buffalo, N. Y.	No through rates					
Elm Park, L. I.	1.90 gr.	1.45 gr.			1.70 gr.	1.70 gr.
El Paso, Ind.						
Edgemoor, Del.	1.50 gr.	1.10 gr.		1.10 gr.	1.45 gr.	1.45 gr.
Elizabethport, N. J.	1.70 gr.	1.35 gr.		1.35 gr.	1.70 gr.	1.70 gr.
Elmer, N. J.	1.50 gr.	1.25 gr.		1.25 gr.	1.60 gr.	1.60 gr.
East Brookfield, Mass.	No through rates					
East River, N. Y.	"	"	"			
Egg Harbor, N. J.	1.75 gr.	1.60 gr.		1.60 gr.	1.95 gr.	1.95 gr.
				4-24-99		
East Danbury, Conn.	2.55 gr.	2.30 gr.	2.30 gr.	2.30 gr.	2.60 gr.	2.60 gr.
East Cambridge, Mass.	No through rates					
East Hampton, Mass.	2.90 gr.	2.60 gr.	2.60 gr.	2.60 gr.	2.90 gr.	2.90 gr.
Erastma, L. I.	No through rates					
Ennerdale, N. Y.	1.65 gr.	1.40 gr.		1.40 gr.	1.70 gr.	1.70 gr.
East Chicago, Ind.			1.75 net			

East St. Louis, Ill.			2.25 "			
Fredericksburg, Va.	1.90 gr.	1.90 gr.		1.90 gr.	2.25 gr.	2.25 gr.
Frenchtown, N. J.	1.65 gr.	1.35 gr.		1.35 gr.	1.70 gr.	1.70 gr.
Flemington, N. J.	1.70 gr.	1.50 gr.		1.50 gr.	1.85 gr.	1.85 gr.
Frederick, Md.	1.50 gr.	1.25 gr.		1.25 gr.	1.60 gr.	1.60 gr.
			4-24-99			
Fort Runyan, Va.	1.50 gr.	1.25 gr.	1.10 gr.	1.10 gr.	1.45 gr.	1.45 gr.
Franklin June., N. J.	No through rates					
			5-16-99			
Fort Wayne, Ind.			1.75 net			
			4-19-99			
Farmingdale, L. I.				2.15 gr.	2.50 gr.	2.50 gr.
			4-24-99			
Farmington, Conn.	2.85 gr.	2.55 gr.	2.55 gr.	2.55 gr.	2.85 gr.	2.85 gr.
Fitchburg, Mass.	No through rates					
Freehold, N. J.	1.70 gr.	1.60 gr.		1.60 gr.	1.95 gr.	1.95 gr.
					5-28-00	
Fulton, N. Y.					1.85 gr.	1.85 gr.
Fresh Pond, Mass.	No through rates					
Franklin Falls, N. H.	"	"	"			
Franklin, N. H.	"	"	"			
					5-8-00	
Fall River, Mass.					4.20 gr.	4.20 gr.
Glassboro, N. J.	1.50 gr.	1.25 gr.		1.25 gr.	1.60 gr.	1.60 gr.
			4-24-99			
Great Barrington, Mass.	2.55 gr.	2.30 gr.	2.30 gr.	2.30 gr.	2.60 gr.	2.60 gr.
			5-16-99			
Great Meadows, N. J.			1.70 gr.	1.70 gr.	2.00 gr.	1.90 gr.
Grand Rapids, Mich.			2.00 net			
Green Island, N. Y.	1.80 gr.					
Galveston, Ind.			1.75 net			
			4-24-99			
Georgetown, Conn.	2.55 gr.	2.30 gr.	2.30 gr.	2.30 gr.	2.60 gr.	2.60 gr.
			5-16-99			
Goshen, Ind.			2.25 net			
Groton, N. Y.	1.75 gr.	1.45 gr.		1.45 gr.	1.75 gr.	1.75 gr.
			4-24-99			
					cancelled	
					10-19-1900	

Schedule.

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Greenfield, Mass.	3.00 gr.	2.70 gr.	2.70 gr.	2.70 gr.	3.00 gr.	
Gardner, Mass.	No through rates					
Grassmere, N. Y.	2.05 gr.	1.60 gr.		1.60 gr.	1.85 gr.	1.85 gr.
Geneva, N. Y.	1.65 gr.	1.40 gr.		1.40 gr.	1.70 gr.	1.70 gr.
Guttenburg, N. J.	No through rates					
Granville, N. Y.	3.10 gr.	2.85 gr.		2.85 gr.	2.90 gr.	2.90 gr.
Garwood, N. J.	1.70 gr.	1.35 gr.		1.35 gr.	1.70 gr.	1.70 gr.
Hurd, N. J.	2.00 gr.	2.00 gr.		2.00 gr.	2.35 gr.	2.20 gr.
Holland, N. J.	1.65 gr.	1.35 gr.		1.35 gr.	1.70 gr.	1.70 gr.
Hagerstown, Md.	1.50 gr.	1.25 gr.		1.25 gr.	1.45 gr.	1.45 gr.
Hightstown, N. J.	1.70 gr.	1.35 gr.		1.35 gr.	1.70 gr.	1.70 gr.
Hudson June., N. Y.	Cannot locate					
Hausotonic, Mass.	2.55 gr.	2.30 gr.	2.30 gr.	2.30 gr.	2.60 gr.	2.60 gr.
Holyoke, Mass.	2.85 gr.	2.55 gr.	2.55 gr.	2.55 gr.	2.85 gr.	2.85 gr.
Harvard, Ill.						
Hart, Mich.						
5-16-99						
Herekimer, N. Y.	1.75 gr.	1.50 gr.		1.50 gr.	1.80 gr.	1.80 gr.
Hinekley, N. Y.						
12-20-97	2.55 gr.					
Horseheads, N. Y.	1.30 gr.	1.10 gr.		1.10 gr.	1.40 gr.	1.40 gr.
Hibernia, N. J.	2.00 gr.	2.00 gr.		2.00 gr.	2.35 gr.	2.20 gr.
Haverhill, Mass.	No through rates					
Howes Cave, N. Y.	1.80 gr.	1.55 gr.		1.55 gr.	1.85 gr.	1.85 gr.
Hammonton, N. J.	1.75 gr.	1.60 gr.		1.60 gr.	1.95 gr.	1.95 gr.
Henniker, N. H.	No through rates					
Hopkinton, Mass.	"	"	"			
Harrison, N. J.	1.70 gr.	1.35 gr.		1.35 gr.	1.70 gr.	1.70 gr.
Hocokus, N. J.						
6-14-97	1.80 gr.	1.80 gr.		1.80 gr.	2.15 gr.	2.15 gr.
Hobart, N. Y.	No through rates					
Huntington, Mass.	"	"	"			
Hoosic Falls, N. Y.	"	"	"			
Hudson, N. Y.	2.10 gr.	1.85 gr.		1.85 gr.	2.15 gr.	2.15 gr.
Hainsville, N. H.	No through rates					
Hackensack, N. J.	1.80 gr.	1.65 gr.		1.65 gr.	2.00 gr.	2.00 gr.
5-16-99						
Indianapolis, Ind.	1.75 net					

Ipswich, Mass.	No through rates					
Ithaca, N. Y.	1.75 gr.	1.45 gr.		1.45 gr.	1.75 gr.	1.75 gr.
International Br., N.Y.	No through rates					
Jersey City, N. J.	1.70 gr.	1.35 gr.		1.35 gr.	1.70 gr.	1.70 gr.
Jones Point, N. Y.	2.36 gr.	2.05 gr.		2.05 gr.	2.40 gr.	2.40 gr.
Jacksonville, Ind.						
Kent, N. J.	1.65 gr.	1.35 gr.		1.35 gr.	1.70 gr.	1.70 gr.
			5-16-99			
Kanakee, Ill.			2.15 net			
Keasby, N. J.	1.70 gr.	1.35 gr.		1.35 gr.	1.70 gr.	1.70 gr.
			4-25-99			
Kenville, N. J.	1.75 gr.	1.75 gr.	1.70 gr.	1.70 gr.	2.05 gr.	1.90 gr.
Lodi, N. J.	2.05 gr.	1.75 gr.		1.75 gr.	2.10 gr.	2.10 gr.
Lenox, Mass.	Cannot locate					
Ligonier, Mich.						
			5-16-99			
Logansport, Ind.			1.75 net			
Little Falls, N. Y.	1.70 gr.	1.50 gr.		1.50 gr.	1.80 gr.	1.80 gr.
Louisville, Ky.			2.25 "			
Lima, Ohio			1.75 "			
Los Angeles, Cal.						
			4-24-99			
Lee, Mass.	2.55 gr.	2.30 gr.	2.30 gr.	2.30 gr.	2.60 gr.	2.60 gr.
Littleton, Mass.	No through rates					
Lowell, Mass.	"	"	"			
London, Ohio			1.55 net			
Ludlow, Mass.	No through rates					
Laconia, N. H.	"	"	"			
Linden, N. J.	1.70 gr.	1.35 gr.		1.35 gr.	1.70 gr.	1.70 gr.
Leominster, Mass.	No through rates					
Lisbon, N. Y.	"	"	"			
La Pararie, Que.	"	"	"			
Milford, N. J.	1.65 gr.	1.35 gr.		1.35 gr.	1.70 gr.	1.70 gr.
Montague, Mass.	No through rates					
Medford, N. J.	1.70 gr.	1.50 gr.		1.50 gr.	1.85 gr.	1.85 gr.
Middlesex, N. Y.	1.90 gr.	1.65 gr.		1.65 gr.	1.95 gr.	1.95 gr.
Moravia, N. Y.	1.75 gr.	1.45 gr.		1.45 gr.	1.75 gr.	1.75 gr.
Maurer, N. J.	1.70 gr.	1.35 gr.		1.35 gr.	1.75 gr.	1.70 gr.

Schedule.

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Millville, N. J.	1.50 gr.	1.25 gr.		1.25 gr.	1.60 gr.	1.60 gr.
Mechanicsville, N. Y.	1.80 gr.	1.55 gr.		1.55 gr.	1.85 gr.	1.85 gr.
Montreal, Can.	No through rates					
Menlo Park, N. Y.	1.70 gr.	1.35 gr.		1.35 gr.	1.70 gr.	1.70 gr.
	5-16-99					
Michigan City, Ind.	2.25 net					
Mineral Pt., Ohio						
	4-24-99					
Middleton, Conn.	2.80 gr.	2.55 gr.	2.55 gr.	2.55 gr.	2.85 gr.	2.95 gr.
Montrose, N. Y.	2.45 gr.	1.95 gr.		1.95 gr.	2.20 gr.	2.20 gr.
Marshalltown, Ia.						
Milddale, Conn.	2.85 gr.	2.55 gr.	2.55 gr.	2.55 gr.	2.85 gr.	2.85 gr.
	8-16-99					
Mansfield, Ohio	1.55 net					
Millers Falls, Mass.	No through rates					
Mays Landing, N. J.	1.50 gr.	1.25 gr.		1.25 gr.	1.60 gr.	1.60 gr.
Manchester, N. H.	No through rates					
Marlboro, Mass.	"	"	"			
Marlboro, N. H.	"	"	"			
Middleburg, Mass.	Cannot locate					
Milford, Mass.	No through rates					
Mellinsville, N. Y.	"	"	"			
	4-24-99					
Matawan, N. J.	1.70 gr.	1.60 gr.		1.60 gr.	1.95 gr.	1.95 gr.
Millbury, Mass.	3.05 gr.	2.80 gr.	2.80 gr.	2.80 gr.	3.10 gr.	3.10 gr.
Mamoroneck, N. J.	2.35 gr.	2.10 gr.	1.90 gr.	1.90 gr.	2.20 gr.	2.20 gr.
Mitteneague, Mass.	No through rates					
Meadows, N.J. (PRR)	1.70 gr.	1.35 gr.		1.35 gr.	1.70 gr.	1.70 gr.
Middleboro, Mass.	No through rates					
Madrid, N. Y.	"	"	"			
	5-16-99					
	2.25 net					
Mayville, Mich.	"	"	"			
McLean, N. Y.	"	"	"			
Newark, N. J.	1.70 gr.	1.35 gr.		1.35 gr.	1.70 gr.	1.70 gr.
Northeast, Md.	1.50 gr.	1.10 gr.		1.10 gr.	1.45 gr.	1.45 gr.
Newton Centre, Del.	Cannot locate					
North Leroy, N. Y.						
				1.50 gr.	1.80 gr.	1.80 gr.

New Brunswick, N. J.	1.70 gr.	1.35 gr.		1.35 gr.	1.70 gr.	1.70 gr.
				4-24-99		
New Brittain, Conn.	2.80 gr.	2.55 gr.	2.55 gr.	2.55 gr.	2.85 gr.	2.85 gr.
New Milford, Conn.	2.55 gr.	2.30 gr.	2.30 gr.	2.30 gr.	2.60 gr.	2.60 gr.
Newburg, N. Y.						
(for beyond)	1.80 gr.	1.55 gr.		1.55 gr.	1.85 gr.	1.85 gr.
Noroton, Conn.	2.40 gr.	2.15 gr.	2.10 gr.	2.10 gr.	2.40 gr.	2.40 gr.
Newburyport, Mass.	No through rates					
North Grafton, Mass.	"	"	"			
New Durham, N. J.		1.65 gr.		1.65 gr.	2.00 gr.	2.00 gr.
Nepera, N. Y.				1.90 gr.	2.20 gr.	2.20 gr.
New Hartford, Conn.	2.85 gr.	2.55 gr.	2.55 gr.	2.55 gr.	2.85 gr.	2.85 gr.
New Haven, Conn.	2.40 gr.	2.15 gr.	2.05 gr.	2.05 gr.	2.35 gr.	2.35 gr.
Natick, Mass.	No through rates					
North Roxbury, Mass.	Cannot locate					
New Rochelle, N. Y.	2.35 gr.	2.10 gr.	1.90 gr.	1.90 gr.	2.20 gr.	2.20 gr.
				5-16-99		
Noblesville, Ind.				2.50 net		
No. Easton, Mass.	No through rates					
No. Adams, Mass.	"	"	"			
Ostrander, N. J.		1.35 gr.		1.35 gr.	1.70 gr.	1.70 gr.
Ottawa, Ont.	No through rates					
Oakland, N. J.	2.23 gr.	1.85 gr.		1.85 gr.	2.20 gr.	2.20 gr.
			9-8-97	4-1-99		
Orange, N. J.	2.15 gr.	1.80 gr.	1.65 gr.	1.65 gr.	2.00 gr.	2.00 gr.
Ocean City, N. J.	1.75 gr.	1.60 gr.		1.60 gr.	1.95 gr.	1.95 gr.
Ottuma, Ia.						
Oriskany Falls, N. Y.	No through rates					
Oneonta, N. Y.	1.80 gr.	1.55 gr.		1.55 gr.	1.85 gr.	1.85 gr.
Omaha, Neb.						
Ovid, N. Y.	1.75 gr.	1.45 gr.		1.45 gr.	1.75 gr.	1.75 gr.
Orange Farm, N. J.	No through rates					
Poughkeepsie, N. Y.	2.10 gr.	1.85 gr.		1.85 gr.	2.15 gr.	2.15 gr.
Plattsburg, N. Y.	3.46 gr.	3.21 gr.		3.21 gr.	3.26 gr.	3.26 gr.
Passaic, N. J.	1.80 gr.	1.65 gr.		1.65 gr.	2.00 gr.	2.00 gr.
				4-25-99		
Port Oram, N. J.	1.75 gr.	1.75 gr.	1.70 gr.	1.70 gr.	2.05 gr.	1.90 gr.
Palmyra, N. J.	1.60 gr.	1.30 gr.		1.30 gr.	1.65 gr.	1.65 gr.
				4-24-99		

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Pittsfield, Mass.	2.55 gr.	2.30 gr.	2.30 gr.	2.30 gr.	2.60 gr.	2.60 gr.
Perth Amboy, N. J.	1.70 gr.	1.35 gr.		1.35 gr.	1.70 gr.	1.70 gr.
Penns Grove, N. J.	1.50 gr.	1.25 gr.		1.25 gr.	1.60 gr.	1.60 gr.
Paterson, N. J.	1.80 gr.	1.65 gr.		1.65 gr.	2.00 gr.	2.00 gr.
Plainfield, N. J.	1.70 gr.	1.35 gr.		1.35 gr.	1.70 gr.	1.70 gr.
Perriville, N. Y.	Cannot locate					
Pelham Manor, N. Y.	2.30 gr.	2.05 gr.	1.90 gr.	1.90 gr.	2.20 gr.	2.20 gr.
			5-16-99			
Pontiac, Mich.			2.30 net			
Prospect, Ohio			2.00 "			
Phillipsburg, N. J.	1.65 gr.	1.35 gr.		1.35 gr.	1.70 gr.	1.70 gr.
Port Henry, N. Y.	3.06 gr.	2.81 gr.		2.81 gr.	2.86 gr.	2.86 gr.
Pompton, N. J.						
11-27-97	2.23 gr.	1.85 gr.		1.85 gr.	2.20 gr.	2.20 gr.
Pequest, N. J.	No through rates					
Prescott, Ont.	"	"	"			
Penn Yan, N. Y.	1.55 gr.	1.40 gr.		1.40 gr.	1.65 gr.	1.65 gr.
Peterboro, N. H.	No through rates					
			4-24-99			
Pawtucket, R. I.	3.05 gr.	2.80 gr.	2.80 gr.	2.80 gr.	3.10 gr.	3.10 gr.
Peekskill, N. Y.	2.45 gr.	1.95 gr.		1.95 gr.	2.20 gr.	2.20 gr.
			5-16-99			
Port Huron, Mich.			2.25 net			
Poneto, Ind.			2.25 "			
Peoria, Ill.			2.25 "			
Quinapoxet, Mass.	No through rates					
			4-24-99			
Rossllyn, Va.	1.50 gr.	1.25 gr.	1.10 gr.	1.10 gr.	1.45 gr.	1.45 gr.
Rahway, N. J.	1.70 gr.	1.35 gr.		1.35 gr.	1.70 gr.	1.70 gr.
Regal Centre, Ind.						
Rocky Hill, N. J.	1.90 gr.	1.55 gr.		1.55 gr.	1.90 gr.	1.70 gr.
			4-25-99			
Rockaway, N. J.	1.75 gr.	1.75 gr.	1.70 gr.	1.70 gr.	2.05 gr.	1.90 gr.
Reading, Mass.	No through rates					
			4-19-99			
Rossllyn, L. I.			1.90 gr.	1.90 gr.	2.25 gr.	2.25 gr.
Randolph, Mass.	No through rates					
Rochester, N. Y.	1.65 gr.	1.40 gr.		1.40 gr.	1.70 gr.	1.70 gr.

Rome, N. Y.	1.75 gr.	1.50 gr.	1.50 gr.	1.80 gr.	1.80 gr.
Rennsslaer, Ind.					
Shirley, Mass.	No through rates				
Stanhope, N. J.	1.85 gr.	1.70 gr.	1.70 gr.	2.05 gr.	1.90 gr.
Skaneateles, Je., N. Y.	1.65 gr.	1.65 gr.	1.65 gr.	1.70 gr.	1.70 gr.
Spring Valley, N. Y.		2.00 gr.	2.00 gr.	2.35 gr.	2.15 gr.
Sloatsburg, N. Y.					
6-14-97	1.80 gr.	1.80 gr.	1.80 gr.	2.15 gr.	2.15 gr.
Springfield, Vt.	Cannot locate				
Sharon, Wis.					
Spencer, Ind.					
St. Johns, Mich.					
			5-16-99		
Springfield, Ohio			1.55 net		
So. Canfield, N. Y.	Cannot locate				
Selbyville, Del.	2.30 gr.	2.30 gr.	2.30 gr.	2.65 gr.	2.65 gr.
South Amboy,					
N. J. track	1.70 gr.	1.35 gr.	1.35 gr.	1.70 gr.	1.70 gr.
			4-24-99		
Sparrow Point, Md.	1.50 gr.	1.10 gr.	1.10 gr.	1.45 gr.	1.45 gr.
So. River, N. J.		1.60 gr.	1.35 gr.	1.35 gr.	1.70 gr.
Seaside Park, N. J.	1.70 gr.	1.60 gr.	1.60 gr.	1.95 gr.	1.95 gr.
Syracuse, N. Y.	1.65 gr.	1.40 gr.	1.40 gr.	1.70 gr.	1.70 gr.
Seneca Falls, N. Y.	1.65 gr.	1.40 gr.	1.40 gr.	1.70 gr.	1.70 gr.
Salem, N. J.	1.50 gr.	1.25 gr.	1.25 gr.	1.60 gr.	1.60 gr.
Sherwood, Md.	1.50 gr.	1.10 gr.	1.10 gr.	1.45 gr.	1.45 gr.
Schoharie, N. Y.	No through rates				
Sodus Point,					
N. Y. local	1.65 gr.	1.40 gr.	1.40 gr.	1.70 gr.	1.70 gr.
South Lee, Mass.	2.55 gr.	2.30 gr.	2.30 gr.	2.30 gr.	2.60 gr.
Sherbrook, Ind.	No through rates				
			6-26-99		
Smyrna, Del.	2.00 gr.	1.75 gr.	1.50 gr.	1.50 gr.	1.85 gr.
Stewartsville, N. J.	No through rates				
			4-24-99		
So. Camden, N. J.	1.50 gr.	1.10 gr.	1.10 gr.	1.45 gr.	1.45 gr.
Seymour, Conn.	2.55 gr.	2.30 gr.	2.30 gr.	2.30 gr.	2.60 gr.
Schenectady, N. Y.	1.80 gr.	1.55 gr.	1.55 gr.	1.85 gr.	1.85 gr.
Stamp, Ark.					

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Springfield, Mass.	2.80 gr.	2.55 gr.	2.55 gr.	2.55 gr.	2.85 gr.	2.85 gr.
	5-16-99					
Streator, Ill.	2.35 net					
Sacramento, Cal.						
Somerville, N. J.	1.70 gr.	1.35 gr.		1.35 gr.	1.70 gr.	1.70 gr.
Spuyten Devil, N. Y.	2.35 gr.	1.85 gr.		1.85 gr.	2.15 gr.	2.15 gr.
Spencer, Mass.	No through rates					
	4-24-99					
Sheffield, Mass.	2.55 gr.	2.30 gr.	2.30 gr.	2.30 gr.	2.60 gr.	2.60 gr.
Springfield, Md.	1.50 gr.	1.10 gr.	1.10 gr.		1.45 gr.	1.45 gr.
Springfield, N. H.	No through rates					
Still River, Conn.	2.55 gr.	2.30 gr.	2.30 gr.	2.30 gr.	2.60 gr.	2.60 gr.
Sheldon, Conn.	2.55 gr.	2.30 gr.	2.30 gr.	2.30 gr.	2.60 gr.	2.60 gr.
Saratoga, N. Y.	2.55 gr.	2.30 gr.		2.30 gr.	2.35 gr.	2.35 gr.
South Gibbon, N. Y.	Cannot locate					
Springfield, Md.	"	"				
So. Acton, Mass.	No through rates					
So. Framingham, Mass.	"	"	"			
Texas, Md.	1.50 gr.	1.10 gr.		1.10 gr.	1.45 gr.	1.45 gr.
Trenton, N. J.	1.60 gr.	1.30 gr.		1.30 gr.	1.65 gr.	1.65 gr.
	5-16-99					
Tiffin, Ohio	1.55 net					
Troy, N. H.	No through rates					
Troy, N. Y.	1.80 gr.	1.55 gr.		1.55 gr.	1.85 gr.	1.85 gr.
Truxton, N. Y.						
Terra Haute, Ind.	2.25 net					
Tuckerton, N. J.	2.00 gr.	2.00 gr.		2.00 gr.	2.35 gr.	2.35 gr.
Utica, N. Y.	1.75 gr.	1.50 gr.		1.50 gr.	1.80 gr.	1.80 gr.
Union Market						
Sta., Mass.	No through rates					
Vulcanite, N. J.	1.65 gr.	1.35 gr.		1.35 gr.	1.70 gr.	1.70 gr.
Vineland, N. J.	1.50 gr.	1.25 gr.		1.25 gr.	1.60 gr.	1.60 gr.
Varna, N. Y.	1.75 gr.					
Vicksburg, Miss.						
	5-16-99					
Valparaiso, Ind.	1.75 net					
Waverley, N. Y.	1.70 gr.	1.45 gr.		1.45 gr.	1.75 gr.	1.75 gr.
West Mount, Ind.						

Whiteshore, N. Y.	Cannot locate					
White Plains, N. Y.	3.05 gr.	2.55 gr.		2.35 gr.	2.65 gr.	2.65 gr.
Watseka, Ill.			2.25 net			
Whitneys Point, N.Y.	1.75 gr.	1.75 gr.	1.45 gr.	1.45 gr.	1.75 gr.	1.75 gr.
Wilmington,						
Del. (PB&W)	1.50 gr.	1.10 gr.		1.10 gr.	1.45 gr.	1.45 gr.
Washington, D. C.	1.50 gr.	1.10 gr.		1.10 gr.	1.45 gr.	1.45 gr.
Winslow Jet., N. J.	1.50 gr.	1.25 gr.		1.25 gr.	1.60 gr.	1.60 gr.
			6-21-99			
Whitings, N. J.						
Wells, N. Y. (ERR)			1.10 gr.	1.10 gr.	1.40 gr.	1.40 gr.
White River, Vt.	No through rate					
Wilmington, Del.	1.50 gr.	1.10 gr.		1.10 gr.	1.45 gr.	1.45 gr.
			4-24-99			
Waterloo, Va.	1.50 gr.	1.25 gr.	1.10 gr.	1.10 gr.	1.45 gr.	1.45 gr.
West Stock-						
bridge, Mass.	2.55 gr.	2.30 gr.	2.30 gr.	2.30 gr.	2.60 gr.	2.60 gr.
Westfield, N. Y.	No through rates					
Walcott, Ind.						
			5-16-99			
Wellesville, Ohio			1.40 net			
Wood Haven, L. I.	No through rates					
West Albany						
Local, N. Y.	1.80 gr.	1.55 gr.		1.55 gr.	1.85 gr.	1.85 gr.
West Albany						
Transp. N. Y.	1.80 gr.	1.55 gr.		1.55 gr.	1.85 gr.	1.85 gr.
			4-24-99			
Watkins, N. Y.	1.55 gr.	1.30 gr.		1.30 gr.	1.60 gr.	1.60 gr.
Worcester, Mass.	3.05 gr.	2.80 gr.	2.80 gr.	2.80 gr.	3.10 gr.	3.10 gr.
West Side Ave., N. J.	1.70 gr.	1.35 gr.		1.35 gr.	1.70 gr.	1.70 gr.
Williamsbridge, N. Y.	2.65 gr.	2.15 gr.		2.00 gr.	2.30 gr.	2.30 gr.
Waterbury, Conn.	2.55 gr.	2.30 gr.	2.30 gr.	2.30 gr.	2.60 gr.	2.60 gr.
Woodstown, N. J.	1.50 gr.	1.25 gr.		1.25 gr.	1.60 gr.	1.60 gr.
Waverly, N. J.	1.70 gr.	1.35 gr.		1.35 gr.	1.70 gr.	1.70 gr.
Winsted, Conn.	2.70 gr.	2.45 gr.*	2.45 gr.	2.45 gr.	2.75 gr.	2.75 gr.
Warren, Mass.	No through rates					
Waltham, Mass.	"	"	"			
West Brookfield, Mass.	"	"	"			
Westboro, Mass.	"	"	"			

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Westfield, Mass.	2.85 gr.	2.55 gr.	2.55 gr.	2.55 gr.	2.85 gr.	2.85 gr.
Wanaque, N. J.	2.40 gr.	1.85 gr.		1.85 gr.	2.20 gr.	2.20 gr.
West Quincy, Mass.	No through rates					
Waterloo, N. Y.	1.65 gr.	1.40 gr.		1.40 gr.	1.70 gr.	1.70 gr.
West Pawlet Vt.,		2.85 gr.		2.85 gr.	2.90 gr.	2.90 gr.
			5-16-99			
Wayland, Mich.			2.00 net			
Warners, N. Y.	1.65 gr.	1.40 gr.		1.40 gr.	1.70 gr.	1.70 gr.
Yale, Mich.			2.25 "			
Youngstown, Ohio			1.40 "			

EXHIBIT "B".

INTERSTATE.
COKE—Net Tons.

	4-1-97	4-24-99	10-2-99	1-1-00	1-1-01	1-17-01
Adams, Mass.	No through rates					
Allston, Mass.	"	"	"			
Ansonia, Conn.	3.10	3.10	3.10	3.10	3.10	3.10
Albany, N. Y.	2.35	2.35	2.35	2.35	2.35	2.35
Athenia, N. J.	No through rates					
Arlington, N. J.	2.04	2.04	1.75	2.05	1.75	1.75
Auburn, N. Y.	2.05	2.05	2.05	2.05	2.05	2.05
Baldwinville, Mass.	No through rates					
Ballston, N. Y.	2.60	2.60	2.60	2.60	2.60	2.60
Bahway, N. Y.	2.04	2.04	1.75	2.05	2.05	2.05
Batavia, N. Y.	1.90	1.90	1.90	1.90	1.90	1.90
				7-1-1900		
Bartley, N. J.	2.04	2.04	1.75	1.95	1.95	1.95
Bayonne, N. J.	2.04	2.04	1.75	2.05	2.05	2.05
Berlin, N. H.	No through rates					
Bellows Falls, Vt.	3.10	3.10	3.10	3.10	3.10	3.10
Belleville, N. J.	2.04	2.04	1.75	2.05	1.75	1.75

Binghampton, N. Y.	2.31	2.31	2.31	2.31	2.31	2.31
Black Rock, N. Y.	No through rates					
Bloomfield, N. J.	2.09	2.09	2.09	2.39	2.09	2.09
Boston, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Boonton, N. J.	2.04	2.04	1.75	2.05	1.75	1.75
Bridgeport, Conn.	3.10	3.10	3.10	3.10	3.10	3.10
Brightwood, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Bristol, Conn.	3.10	3.10	3.10	3.10	3.10	3.10
Bridgewater, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Bridgeton, N. J.	1.83	1.75	1.75	2.05	1.75	1.75
Breaker Island, N. Y.	2.35	2.35	2.35	2.35	2.35	2.35
Bridgewater, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Brooklyn, N. Y.	2.54	2.25	2.25	2.55	2.25	2.25
Burlington, N. J.	1.83	1.60	1.60	1.90	1.60	1.60
Canton, Balto., Md.	1.55	1.55	1.55	1.85	1.55	1.55
Cambridgeport, Mass.	No through rates					
Camden, N. J.	1.83	1.60	1.60	1.90	1.60	1.60
Carteret, N. J.	2.04	2.04	1.75	2.05	2.05	2.05
Carliss Wks., R. I.	No through rates					
Central Falls, R. I.	3.10	3.10	3.10	3.10	3.10	3.10
Caxaxie, N. Y.	2.54	2.54	2.54	2.54	2.54	2.54
Chicopee Falls, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Chicopee, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Clinton, N. Y.	No through rates					
Clifton, N. J.	2.04	2.04	1.75	2.05	1.75	1.75
	1-23-99			5-22-00		
Cold Springs, N. Y.		2.54	2.54	2.54	2.55	2.55
Cohoes, N. Y.	2.35	2.35	2.35	2.35	2.35	2.35
Constable Hook, N. J.	2.04	2.04	1.75	2.05	2.05	2.05
Corning	No through rates					
Danbury, Conn.	3.10	3.10	3.10	3.10	3.10	3.10
Dexter, Md.	Cannot locate					
Dundalk, Md.	1.55	1.55	1.55	1.85	1.55	1.55
Elizabeth, N. J.	2.04	1.75	1.75	2.05	1.75	1.75
Elmira, N. Y.	1.51	1.51	1.51	1.70	1.50	1.50
Elizabethport, N. J.	2.04	2.04	1.75	2.05	2.05	2.05
Elkton, Md.	1.75	1.55	1.55	1.85	1.55	1.55
Fall River, Mass.	3.10	3.10	3.10	3.10	3.10	3.10

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Fairton, N. J.	1.83	1.83	1.75	2.05		2.05	2.05
Fairhaven, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
	7-1-99						
Flemington, N. J.	1.83	1.65	1.75	2.05		1.75	1.75
Florence, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
Florence, N. J.	1.83	1.60	1.60	1.90		1.60	1.60
Fitchburg, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
Foxboro, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
Fremont, Mass.	No through rates						
Gardner, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
	9-24-00						
Geneva, N. Y.	2.05	2.05	2.05	2.05	1.90	1.90	1.90
Gloucester, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
Greenport, L. I.	No through rates						
Groton, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
Hackensack, N. J.	2.04	2.04	1.75	2.05		1.75	1.75
	7-1-1900						
Hackettstown, N. J.	2.04	2.04	1.75	2.05	1.95	1.60	1.60
Hallowell, Me.	No through rates						
Hagerstown, Md.	1.55	1.55	1.55	1.85		1.55	1.55
Hartford, Conn.	3.10	3.10	3.10	3.10		3.10	3.10
Harrison, N. J.	2.04	1.75	1.75	2.05		1.75	1.75
Hainesport, N. J.	1.83	1.75	1.75	2.05		1.75	1.75
High Bridge, N. J.	1.83	1.83	1.75	2.05	1.95	1.95	1.95
Hokokuss, N. J.	No through rates						
Hoboken, N. J.	2.04	2.04	1.75	2.05		1.75	1.75
Hoosic Falls, N. J.	3.00	3.00	3.00	3.00		3.00	3.00
Holyoke, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
Howes Cave, N. Y.	2.35	2.35	2.35	2.35		2.35	2.35
Hyde Park, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
Indian Orchard, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
	5-22-00						
Irvington, N. Y.	2.54	2.54	2.54	2.54	2.55	2.55	2.55
Jersey City, N. J.	2.04	1.75	1.75	2.05		1.75	1.75
	7-1-1900						
Kent, N. J.	1.83	1.60	1.60	1.90	1.85	1.60	1.60
Keene, N. H.	3.10	3.10	3.10	3.10		3.10	3.10
Lawrence, Mass.	3.10	3.10	3.10	3.10		3.10	3.10

Lambertville, N. J.	1.83	1.60	1.60	1.90	1.85	1.60	1.60
Lewiston, Me.	No through rates						
Lee, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
Lowell, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
Lockport, N. Y.	1.90	1.90	1.90	1.90		1.90	1.90
Long Island City, N. J.	2.54	2.25	2.25	2.55		2.25	2.25
Lynn, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
9-24-1900							
Macedon, N. Y.	2.05	2.05	2.05	2.05	1.90	1.90	1.90
Malden, N. Y.	No through rates						
Manhattenville, N. Y.	Cannot locate						
Manchester, N. H.	3.10	3.10	3.10	3.10		3.10	3.10
Mattawan, N. Y.	No through rates						
Marlboro, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
3-28-98							
Marathon, N. Y.	2.60	2.31	2.31	2.31		2.31	2.31
Mechanic Fall, Me.	No through rates						
Meadows, N. J.	2.04	1.75	1.75	2.05		1.75	1.75
Mechanicville, N. Y.	2.35	2.35	2.35	2.35		2.35	2.35
Meridan, Conn.	3.10	3.10	3.10	3.10		3.10	3.10
Merchantville, N. J.	1.83	1.75	1.75	2.05		1.75	1.75
Middleboro, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
Millers Falls, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
Millville, N. J.	1.83	1.75	1.75	2.05		1.75	1.75
Mott Haven, N. Y.	No through rates						
Mt. Holly, N. J.	1.83	1.75	1.75	2.05		1.75	1.75
Montreal, Canada	4.10	4.10	4.10	4.10		4.10	4.10
Mystie, Conn.	3.10	3.10	3.10	3.10		3.10	3.10
New Brittain, Conn.	3.10	3.10	3.10	3.10		3.10	3.10
Newburg, N. Y.	No through rates						
New Haven, Conn.	3.10	3.10	3.10	3.10		3.10	3.10
Newark, N. J.	2.04	1.75	1.75	2.05		1.75	1.75
New Brunswick, N. J.	2.04	1.75	1.75	2.05		1.75	1.75
New Bedford, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
New York, 33rd St.	No through rates						
Newton, Upper							
Falls, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
No. Cromwell, Conn.	No through rates						
No. River, N. Y.	"	"	"				

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New Bedford, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
Norwood, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
North Adams, Mass.	No through rates						
Orange, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
					7-1-1900		
Oxford, N. J.	2.04	2.04	1.75	2.05	1.95	1.60	1.60
Passaic, N. J.	2.04	2.04	1.75	2.05		1.75	1.75
Pawtucket, R. I.	3.10	3.10	3.10	3.10		3.10	3.10
Plainfield, Conn.	3.10	3.10	3.10	3.10		3.10	3.10
Port Oram, N. J.	2.04	1.75	1.75	2.05	1.95	1.60	1.60
Perth Amboy, N. J.	2.04	1.75	1.75	2.05		1.75	1.75
					5-22-00		
Peekskill, N. Y.	2.54	2.54	2.54	2.54	2.55	2.55	2.55
Peacoe, N. H.	Cannot locate						
Peabody, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
Perryville, Ind.	No through rates						
					7-1-1900		
Phillipsburg, N. J.	1.83	1.60	1.60	1.90	1.85	1.60	1.60
Plymouth, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
Plainfield, Conn.	3.10	3.10	3.10	3.10		3.10	3.10
Poughkeepsie, N. Y.	2.54	2.54	2.54	2.54		2.54	2.54
Portland, Me.	3.10	3.10	3.10	3.10		3.10	3.10
Portchester, N. Y.	3.10	3.10	3.10	3.10		3.10	3.10
					1-21-01		
					2.80		
Port Jervis, N. Y.	2.34	2.34	2.34	2.64		2.34	2.34
					7-1-1900		
Port Oram, N. J.	2.04	2.04	1.75	2.05	1.95	1.60	1.60
Providence, R. I.	3.10	3.10	3.10	3.10		3.10	3.10
Rutland, Vt.	3.10	3.10	3.10	3.10		3.10	3.10
Rahway, N. J.	2.04	1.75	1.75	2.05		1.75	1.75
Rixeyville, Vt.	No through rates						
Riverpoint, R. I.	3.10	3.10	3.10	3.10		3.10	3.10
Rockport, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
Rockaway, N. J.	2.04	2.04	1.75	2.05	1.95	1.95	1.95
Rochester, N. Y.	1.90	1.90	1.90	1.90		1.90	1.90
Rome, N. Y.	2.35	2.35	2.35	2.35		2.35	2.35
Roxboro, Mass.	Cannot locate						

Salmon Falls, N. H.	3.10	3.10	3.10	3.10		3.10	3.10
Salem, N. J.	1.83	1.75	1.75	2.05		1.75	1.75
					4-23-00		
Sayreville, N. J.					2.05	1.75	1.75
Saco, Wis.	No through rates						
Salem, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
Saco, Me.	3.10	3.10	3.10	3.10		3.10	3.10
Seneca Falls, N. Y.	2.05	2.05	2.05	2.05		2.05	2.05
Schenectady, N. Y.	2.35	2.35	2.35	2.35		2.35	2.35
Seaside, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
Shelton, Conn.	3.10	3.10	3.10	3.10		3.10	3.10
					5-22-00		
Sing Sing, N. Y.	2.54	2.54	2.54	2.54	2.55	2.55	2.55
Smithville, N. J.	2.04	1.95	1.95	2.25		1.95	1.95
So. Wareham, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
					4-23-00		
So. River, N. J.					2.05	1.75	1.75
So. Norwalk, Conn.	3.10	3.10	3.10	3.10		3.10	3.10
So. Amboy, N. J.	2.04	1.75	1.75	2.05		1.75	1.75
Somerset, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
So. Framingham, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
Somerville, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
Sparrows Point, Ind.	No through rates						
Springfield, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
					7-1-1900		
Stanhope, N. J.	2.04	2.04	1.75	2.05	1.95	1.60	1.60
Stamford, Conn.	3.10	3.10	3.10	3.10		3.10	3.10
Stonington, Conn.	3.10	3.10	3.10	3.10		3.10	3.10
Syracuse, N. Y.	2.05	2.05	2.05	2.05		2.05	2.05
Taunton, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
Tremont, Mass.	3.10	3.10	3.10	3.10		3.10	3.10
Trenton, N. J.	1.83	1.60	1.60	1.90	1.85	1.60	1.60
Torrington, Conn.	3.10	3.10	3.10	3.10		3.10	3.10
Troy, N. Y.	2.35	2.35	2.35	2.35		2.35	2.35
					11-21-00		
Tottenville, N. Y.					2.25	2.25	2.25
Utica, N. Y.	2.35	2.35	2.35	2.35		2.35	2.35
Union Market, Mass.	3.10	3.10	3.10	3.10		3.10	3.10

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Vineland, N. J.	1.83	1.75	1.75	2.05	1.75	1.75
Wallingford, Conn.	3.10	3.10	3.10	3.10	3.10	3.10
Wakefield, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Waltham, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Walden, N. Y.	No through rates					
Waterbury, Conn.	3.10	3.10	3.10	3.10	3.10	3.10
Washington, D. C.	1.55	1.55	1.55	1.85	1.55	1.55
Warren, R. I.	3.10	3.10	3.10	3.10	3.10	3.10
Watertown, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
West Everett, Mass.	No through rates					
Webers Siding, Pa.	Cannot locate					
West Haven, N. Y.	" "					
Weehawken, N. J.	2.04	2.04	2.04	2.04	2.04	2.04
Westbrook, Me.	3.10	3.10	3.10	3.10	3.10	3.10
Wilmington, Del.	1.75	1.55	1.55	1.85	1.55	1.55
Willimantic, Conn.	3.10	3.10	3.10	3.10	3.10	3.10
Woodriver, Mass.	No through rates					
Worcester, Mass.	3.10	3.10	3.10	3.10	3.10	3.10
Woonsocket, R. I.	3.10	3.10	3.10	3.10	3.10	3.10
Yonkers, N. Y.	2.54	2.54	2.54	5-22-00 2.55	2.55	2.55

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Session, 1905. No. 4.

AT LAW.

MITCHELL COAL AND COKE COMPANY
vs.
PENNSYLVANIA RAILROAD COMPANY.

OPINION.

Filed September 9, 1910.

Hearing upon exceptions to Referee's report and upon motions to amend plaintiff's statement of claim.

McPHERSON, *District Judge.*

This action of trespass is based upon unlawful discrimination in rates upon interstate shipments of coal and coke (Sections 2 and 8, Act of 1887). It was brought on March 14, 1905, and the statement of claim,—which was filed in the following November,—relies upon the commission of discriminating acts between April 1, 1897, and May 1, 1901. The Pennsylvania statute of limitations bars an action of trespass after six years from the commission of the unlawful act, and it is evident, therefore, that the right to recover depends upon the plaintiff's ability to show discriminating acts after March 14, 1899, unless the defendant's own conduct

has prevented the statute from operating. It is also evident that if the plaintiff ever had any right of action against the defendant based upon other discriminating acts committed before May 1, 1901, than the particular acts specified in the statement of claim, the statute of limitations became a bar to recovery thereon after May 1, 1907, at the farthest. And it became a bar at that date, no matter in what form the plaintiff should attempt to enforce redress for such other acts—whether by a separate suit, or by pursuing the course that has been actually adopted, namely; seeking to introduce these acts by way of amendment in a former suit. It is too well settled in Pennsylvania to need discussion, that a new cause of action cannot be introduced by amendment after the statute has run. *Noonan vs. Pardee*, 200 Pa., 474; *Phila. vs. Railway Co.*, 203 Pa., 38; *Mahoney vs. Steel Co.*, 217 Pa., 20; *Lane vs. Water Co.* 220 Pa., 599, and *Shaffer's Estate*, 228 Pa., 36.

The plaintiff has made several attempts to amend the original statement of claim so as to enlarge its scope by including new and additional discriminating acts. On April 17, 1907, the first petition to amend was presented, but this was withdrawn on October 30, 1907 (notes of testimony, page 186), and therefore need not be considered. A second petition was presented on June 29, 1907 and on July 1, 1907, the Court made an order referring the petition and the whole subject of amendment to the decision of the referee—who had meanwhile been appointed by agreement of the parties to take testimony and report his findings of fact and conclusions of law. His report, however, does not refer to the subject of amendment at all, but he holds that no part of the plaintiff's claim is barred by the statute, and puts the decision upon the defendant's fraudulent misrepresentation and concealment. On May 2, 1910, a third petition to amend was presented, and this with the second petition is now before the

Court to be disposed of. For the reason just given, and upon the authority of the cases cited, the petitions are refused. Similar applications were recently denied by Judge Ferguson in Common Pleas No. 3, of Philadelphia County, in a suit between the same parties involving a different phase of the same dispute.

In this connection it will be convenient to consider the referee's ruling that the statute does not bar any part of the plaintiff's claim because the defendant has been guilty of fraudulent conduct. The statement of claim covers the period between April 1, 1897, and May 1, 1901, and the statute (which was duly pleaded by the defendant) normally bars recovery for any discrimination before March 14, 1899. But the referee was of the opinion that the payment of rebates to other shippers, as well as the amounts of such rebates, "were deliberately concealed from the Mitchell Coal and Coke Company by the Pennsylvania Railroad Company," and that the plaintiff "was misled by the representations of the officials of the Pennsylvania Railroad Company made with the intention of preventing the Mitchell Coal and Coke Company from ascertaining the fact of the payment of rebates." He further found:

"69. The Mitchell Coal and Coke Company, by its officers, made diligent efforts to ascertain whether any rebates or other forms of advantage in the payment of money or otherwise, were being given by the Pennsylvania Railroad Company to the Altoona Coal and Coke Company, Glen White Coal and Lumber Company, Millwood Coal and Lumber Company, Bolivar Coal and Coke Company, and Latrobe Coal Company, or any of them, but the officials of the Pennsylvania Railroad Company deliberately shut off all avenues of information on this point, and fraudulently told the officers of the Mitchell Coal and Coke Company that none of the said other companies obtained or would obtain any advantage, and that the Mitchell

Coal and Coke Company would be notified of any reduction in rates made to any of those companies. At the time when such statements were made, rebates under various forms and disguises were being paid to the said companies, and continued to be paid until after May 1, 1901."

These are findings of fact and are entitled to the weight that is usually and properly allowed to such findings; but they are not conclusive, and a careful consideration of the scanty testimony on this subject has convinced me that the referee was mistaken in the inferences he has drawn and in the application of the rule of law upon which he relies. As it seems to me, the utmost scope that can be given to the testimony concerning the declarations by Mr. Joyce, the defendant's coal freight agent, falls short of showing fraud. What happened was this: In March, 1897, Mr. Joyce promised Mr. Mitchell, the plaintiff's president, that in the future the plaintiff should be as well treated as any other shipper. Mr. Mitchell was then settling a claim growing out of shipments prior to March, 1897, and received the following promise from Mr. Joyce (notes of testimony, page 146): "Now, Mr. Mitchell, I have got leave to settle this claim for less than \$70,000, and if you will take it at that I will guarantee you that from this on you will get as good treatment and as good rates as anybody else shipping on the road." Mr. Mitchell then goes on: "Among other things he advised me to move my office to Philadelphia so I would be in touch with the people, and they could notify me when anything was coming up—any business or lower rates. I settled with him that day for \$69,500. That was in March, 1897. * * * * *

"Q. And Mr. Joyce told you you would get in the future as low rates and as good facilities as anybody on the road?

A. Yes, sir.

Q. And that they would notify you if there were any additional concessions of any kind made to any shipper?

A. He advised me to come here where I could be in touch so I could be notified, and that he would assure me as good rates as anybody else.

Q. And on the strength of that you made the settlement for \$69,500?

A. That was part of the consideration, yes, sir. Releasing that claim."

As will appear hereafter, this promise was not kept, and discriminating rates were afterwards given to some of the plaintiff's competitors. But the testimony quoted comprises all that was offered to support the charge of fraudulent concealment, and to my mind it is not sufficient. I am unable to discover the evidence to prove the finding that the plaintiff "made diligent efforts to ascertain whether any rebates or other terms of advantage in the payment of money or otherwise were being given by the Pennsylvania Railroad Company to the Altoona Coal and Coke Company, etc., etc., but the officials of the Pennsylvania Railroad Company deliberately shut off all avenues of information on this point, and fraudulently told the officers of the Mitchell Coal and Coke Company that none of the said other companies obtained or would obtain any advantage, and that the Mitchell Coal and Coke Company would be notified of any reduction in rates made to any of those companies." In brief, the evidence proves this situation: Every shipper was getting the best secret rates he could. The plaintiff had not been as successful as others, and was naturally dissatisfied. At the interview referred to, Mr. Joyce promised the plaintiff that the defendant would thereafter discharge its plain duty as a common carrier and would not discriminate in favor of others. But the promise was afterwards broken. No subsequent fraudulent conduct or representation is either alleged or proved, and I am at a

loss to see how this broken promise can be held to be such fraud as prevents the running of the statute. As the defendant argues; suppose the promise had been to charge only reasonable rates, or to carry safely, and suppose that either of these promises had been broken—could this be properly regarded as fraudulent conduct? Judge Dallas thought otherwise in *Despeaux vs. Railroad*, 87 Fed., 794, and the defendant's brief cites several other decisions to the same effect. If then, as I think, the broken promise made by the defendant's agent was not in itself fraudulent, and if there is no evidence of any subsequent fraudulent conduct or representation, it can make no difference which of the two rules of law is applied to which the Supreme Court of Pennsylvania refers in *Smith vs. Blachley*, 198 Pa., 173. Mr. Justice Mitchell in discussing the subject referred to these rules as follows:

“It is said in general that in cases of fraud the statute runs only from discovery, or from when with reasonable diligence there ought to have been discovery. But a distinction is made in regard to the starting point of the statute between fraud completed and ending with the act which gives rise to the cause of action, and fraud continued afterwards in efforts or acts tending to prevent discovery. On this distinction there are two widely divergent views. It is held on the one hand that the fraud, though complete and fully actionable, nevertheless operates as of itself a continuing cause of action until discovery, while on the other hand it is held that when the cause of action is once complete the statute begins to run, and suit must be brought within the prescribed term, unless discovery is prevented by some additional and affirmative fraud done with that intent.

The United States courts have adopted the first view in treating the limitation of actions in the bankruptcy acts: *Bailey vs. Glover*, 88 U. S.,

343; *Traer vs. Clews*, 115 U. S., 528. On the other hand, in *Troup vs. Smith's Exr's*, 20 Johns. 33, it was held that in a court of law the statute runs from the act 'whether there was a fraudulent concealment or not so as to prevent the plaintiff discovering the fraud.' and Chief Justice Spencer said that even in a court of equity the plaintiff must fail, 'as the concealment of the fraud is not imputed to the testator. What he did was visible and what he neglected to do would or might have been discovered by repairing to the land.' This view appears to be still held in New York: *Miller vs. Wood*, 116 N. Y., 351, and in other States. In many States, however, the decisions are so influenced by statutory provisions that they afford us little light on the subject as governed by the common law. And he sums up the discussion on page 179: 'We regard the distinction as sound, well marked and in harmony with the spirit and letter of the statute. The cases which hold that where fraud is concealed or as sometimes added, conceals itself, the statute runs only from discovery, practically repeal the statute *pro tanto*. Fraud is always concealed. If it was not no fraud would ever succeed. But when it is accomplished and ended, the rights of the parties are fixed. The right of action is complete. If plaintiff bestirs himself to inquire, he has ample time to investigate and bring his action. If both parties rest on their oars the statute runs its regular course. But if the wrongdoer adds to his original fraud, affirmative efforts to divert or mislead or prevent discovery, then he gives to his original act a continuing character by virtue of which he deprives it of the protection of the statute until discovery.' "

I think therefore that the referee was in error upon this point, and that the plaintiff can only recover

in respect of such injurious discriminating acts as were committed after March 14, 1899, and are specified in the statement of claim. No amendment having been allowed, the cause of action remains as the plaintiff stated it, several years after the injurious acts were committed, and eight months after the suit was actually begun.

The acts declared upon are in substance as follows :

Plaintiff owned bituminous coal lands in the Clearfield region of Pennsylvania and operated six collieries thereon, four of them in Blair County along the main line of the defendant, and two in Cambria County along the Cambria & Clearfield Railroad, a branch of the defendant's system. Of the first four collieries, the plaintiff operated Gallitzin and Columbia No. 4 from April 1, 1897, to May 1, 1901; Columbia No. 7 from July 20, 1899, to May 1, 1901, and Bennington from October 30, 1899, to May 1, 1901. Of the other two, Hastings was operated from April 1, 1897, to May 1, 1901, and Columbia No. 6 from December 8, 1898, to May 1, 1901. Among other operators in the Clearfield region, were the Altoona Coal and Coke Company, the Glen White Coal and Lumber Company, and the Millwood Coal Company. The Latrobe region lies immediately west of the Clearfield region, and in this were situated the collieries of the Latrobe Coal and Coke Company and the Bolivar Coal and Coke Company. Interstate shipments of coal and coke were made from plaintiff's collieries and from the collieries of the other five companies during the period from April 1, 1897, to May 1, 1901, and the plaintiff complains of discrimination against its business and in favor of the rival shippers just named. The method of discrimination is described as follows: The Altoona Company and the Glen White Company each owned a short line or branch from their respective operations to the defendant's road, and also owned a locomotive which hauled the loaded or empty cars to and from the

defendant's road. The Millwood Company had no branch, but had a switch or connection with its mine tracks and along this switch its own locomotive hauled the empty or loaded cars. The Latrobe Company owned a branch, but had no locomotive, and the defendant's own engines hauled the loaded and empty cars. The Bolivar Company's colliery was reached over a branch owned by the defendant itself, and the loaded and empty cars were hauled by the defendant's own locomotives. All the plaintiff's collieries were connected with the defendant's road by short lines or branches owned by the plaintiff, but the motive power was furnished by the defendant upon them all—except that for a year and seven months (from October 1, 1899, to May 1, 1901) the plaintiff owned a locomotive at Gallitzin colliery and used it to move the empty and loaded cars. Having thus outlined the situation, plaintiff's statement goes on to compare the Altoona, the Glen White, and the Millwood collieries with the Gallitzin colliery between October 1899 and May 1901, averring that these four reached the same general markets, and that the defendant in transporting their products for these companies performed like and contemporaneous service for like traffic under substantially similar circumstances and conditions. The statement then charges that from October 1899 to May 1901, the defendant allowed the Altoona, the Glen White, and the Millwood companies a rebate of 15 cents per ton on all the coal and coke passing over their lines or branches connecting these collieries with the defendant's road, but allowed no rebate or drawback or compensation whatever upon coal and coke shipped during the same period from the Gallitzin colliery.

Plaintiff then compares the coal and coke shipped from its five other collieries during the whole period from April 1897 to May 1901, and also shipped from Gallitzin between April 1897 and October 1899 with the coal or coke shipped from the Latrobe and the Bolivar

collieries, averring that the products from these eight operations reached the same general markets, and that the defendant performed for all of them like and contemporaneous service in transporting like traffic under substantially similar circumstances and conditions. Discrimination is charged because the defendant allowed the Latrobe and the Bolivar collieries a rebate of 10 cents per ton, but allowed no rebate or compensation of any kind to the plaintiff. Two specific charges are then made: (1) That for the coal and coke shipped from Gallitzin between October 1899 and May 1901 the defendant charged and collected from the plaintiff a greater compensation, namely, 15 cents per ton, than it charged and collected from the Altoona, the Glen White and the Millwood companies; and (2) That for the coal and coke shipped from the five other collieries of the plaintiff and also from Gallitzin before October 1899, the defendant charged and collected a greater compensation, namely, 10 cents per ton, than it charged and collected from the Latrobe and Bolivar companies.

This is a sufficient summary of the statement of claim. It contains precise and definite charges, and as it contains no others the plaintiff should be confined to these. The payment of the sums complained of—15 cents and 10 cents per ton respectively—is conceded, but the defendant explained it as mere compensation for trackage or for services rendered by the favored shippers. Whether it was such a compensation as the defendant might lawfully pay, or whether it was an unlawful rebate in disguise, was a question of fact, and the Referee has decided it in favor of the plaintiff. With this finding I agree. There is some room for doubt in the evidence on this point, but when all is said (and much has been ably said on behalf of the defendant) I see no sufficient reason to differ from the referee's conclusion. The defendant made no effort to prove the money value that might properly be put upon the use of the various branches, or upon the services rendered by the loco-

tives of the favored shippers, and the failure to throw light upon this obviously important matter is I think not without significance. There was a good deal of other evidence also upon one side or the other of the question under consideration, and, as I have already said, I agree that upon the whole evidence the payments referred to were unlawful rebates.

To what extent did they injure the plaintiff? The statement of claim replies—that upon all shipments made from Gallitzin between October 1899 and May 1901 the plaintiff has been injured 15 cents per ton, and that upon all other shipments the injury amounts to 10 cents per ton. The referee however held that the measure of damage was the sum paid to the Altoona Company, and applied it practically to all of the plaintiff's shipments from all its collieries. This it seems to me was a clear mistake; it gives the plaintiff what it did not sue for, and has not lawfully claimed; and the judgment to be entered hereafter must be computed in accordance with the sums demanded by the pleadings.

The defendant raises several other objections that may be briefly considered. It is suggested that the Interstate Commerce Commission should have been first applied to, and that the Circuit Court (for the present at least) has no jurisdiction of the suit. The recent decision of this Court in *Morrisdale Coal Co. vs. Pennsylvania Railroad Co.*, 176 Fed., 748, is referred to in support of this proposition. That case is now *sub judice* in the Court of Appeals, and obviously, as it seems to me, I should not repeat a ruling which may shortly be declared erroneous. For the immediate purpose I shall therefore hold formally that the Circuit Court should exercise jurisdiction of the pending controversy.

It is objected further that the plaintiff's right to recover is either wholly or partly taken away by its failure to make protest at the various times when it

paid the higher rates charged against its shipments. In reply it is enough to cite *Pennsylvania Railroad Co. v. International Coal Mining Co.*, 173 Fed., 1, where the Court of Appeals of the Third Circuit has decided that such an objection is not valid.

That the plaintiff cannot recover in respect of any shipments upon which it also received unlawful rebates, is not denied, but there is a dispute about dates on this subject. The referee has found as a fact that no rebates were paid to the plaintiff after April 1, 1899, and I am asked to say that the evidence points to such payments as late as April 1, 1900. Undoubtedly there is evidence that would justify that conclusion, but there is also conflicting evidence, and I must decline to set aside the finding of the referee contained in the 67th paragraph of his report.

So far as the payments to the Bolivar Company are concerned, I am of opinion that they did the plaintiff no harm and cannot furnish a basis for recovery. The Bolivar Company shipped no coal, its business being confined to coke, and upon coke the tariff rate from the Latrobe region, in which the Bolivar colliery was situated, was 20 cents per ton higher than the tariff rates charged against the plaintiff. Assuming therefore that the payments to the Bolivar Company were rebates, they did the plaintiff no harm, because they left the actual rate on coke paid by the Bolivar Company higher than the rate paid by the plaintiff on like shipments. And similar facts are true concerning the rates upon coke shipped by the Latrobe Company during the whole period covered by the action, and also upon coal shipped by the same Company before April 1, 1899. Conceding that the payments received by this company were rebates, they did the plaintiff no harm before April 1, 1899. After that date the defendant charged the same rates on coal from both the Latrobe and the Clearfield regions, and the rebate on coal then became injurious.

The defendant also argues that in computing the damages "contemporaneous service" must be confined to shipments made for the plaintiff and for the favored shippers at the same, or practically the same, moment of time; and that shipments a week apart, or certainly a month apart, would therefore be too remote. No doubt "contemporaneous" means "at the same time"—but at the same time with what? A term is evidently implied which must be looked for in the context and in the subject matter of the statute. In my opinion the well-known evil aimed at in Section 2 requires the Court to hold that the implied term in the comparison is the offending rates—making the word to mean, "at the same time with the offending rates"—and that, as long as these rates remain in force, the services rendered to a complaining and to a favored shipper are "contemporaneous" within the meaning of the statute. As far as I am aware there is no decision upon this subject, but *Wight v. United States*, 167 U. S., 512, furnishes I think some inferential support to the construction just given.

It is further objected that the referee did not properly discriminate among the plaintiff's shipments, but computed damages on all of them without regard to the question whether they reached the same market that was reached by the coal or coke of the favored shipper. This objection I regard as well taken. Discrimination can only injure a complaining shipper if his rival has been given an unfair advantage in the same market, and I do not see why a plaintiff should be allowed damages on coal shipped, for example, to Baltimore, because a rival had received rebates on coal shipped to Newark. It may not be always easy to determine what is the same market, but if difficulties arise they must be met and overcome in the usual way. It is obvious that different points of destination might belong to the same market, and that many other considerations may enter into the problem. But other ques-

tions of fact are often complicated, and although they may be hard to solve they are continually demanding solution. This question probably belongs to that class, but I see no rough and ready way out of the difficulty. If the parties cannot agree upon this point, there will have to be a further inquiry.

The defendant also objects that the service rendered to the plaintiff and to the favored shippers was not "like" in many instances, because not only were the points of destination different, but also because these points could be reached over various routes that were covered in part by other carriers. This objection may have a bearing upon the question, whether the rival shippers were seeking the same market; rates over one route might admit to the market, while rates over another route might shut the traffic out. This aspect of the matter has not been considered, and (as I understand) the evidence does not show by what route a shipment was actually made, but merely that it was possible to reach certain destinations over more routes than one. If the objection is thought to have any bearing upon the question whether the payments to the favored shippers were rebates, it seems sufficient to reply that the payments were made without reference to destination or route, and were apparently not influenced by either consideration.

An application to allow counsel fees to the plaintiff was presented to the referee and is now before the Court. Nothing was said about it on the argument, however, and the matter may stand over until judgment comes to be entered in accordance with the above opinion. A motion to enter judgment may be made at any time after the necessary computation has been made.

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Session, 1905. No. 4.

MITCHELL COAL AND COKE COMPANY
vs.
PENNSYLVANIA RAILROAD COMPANY.

MOTION TO DISMISS FOR WANT OF JURISDICTION.
Filed November 26, 1910.

The Pennsylvania Railroad Company, the defendant in the above entitled action, respectfully moves the Court to enter an order dismissing the action for want of jurisdiction, and assigns the following reasons therefor:

The plaintiff, as will appear by a reference to the Record of the case and to the proceedings had before the Referee to whom the same by agreement of the parties was referred, is seeking to recover damages from the defendant upon the ground that certain of its practices were of a discriminatory character and subjected the plaintiff to loss and damage.

The loss and damage so sustained is claimed to have resulted from the making by the defendant of payments to certain shippers of coal—five in number, viz., the Altoona Coal and Coke Company, the Glen White Coal & Lumber Company, the Bolivar Coal and Coke Company, the Millwood Coal and Coke Company, and the Latrobe Coal Company—for services rendered

by these shippers or for other reasons. The payments complained of were made throughout the period of the action, and were of such a character that if they operated to secure a preference in favor of those to whom they were made, such preference affected not the plaintiff alone, but all of the shippers whose mines were located in the district or region in which the plaintiff's mines were located, and these comprised a very large number.

Under these circumstances, your petitioner is advised and therefore avers that the question whether its practice in making these payments was or was not obnoxious to the provisions of the Interstate Commerce Act, which is the underlying issue in this case, is one which, having regard to the principles heretofore determined by this Court, as well as by the Circuit Court of Appeals for this circuit, and by the Supreme Court, must be determined primarily by the Interstate Commerce Commission, and that as a consequence this Court is without jurisdiction to pass upon and determine the issues involved herein.

Wherefore your petitioner prays that an order of dismissal for want of jurisdiction may be duly entered.

And it will ever pray, etc.

JOHN G. JOHNSON,
Atty. for Defendant.

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Session, 1905. No. 4.

MITCHELL COAL AND COKE COMPANY
vs.
PENNSYLVANIA RAILROAD COMPANY.

OPINION.
Filed January 4, 1911.

MOTION TO DISMISS FOR WANT OF JURISDICTION.

McPHERSON, *District Judge.*

The facts of this case will be found in 181 Fed. at page 403. Since the opinion there reported was filed, the court of appeals for the third circuit has disposed of the case referred to on page 410—Morrisdale Coal Company vs. Pennsylvania Railroad Co.—and has decided that:

“The Interstate Commerce Commission alone has original jurisdiction to determine whether an existing rate schedule, or an existing regulation or practice affecting rates, or an existing regulation or practice of any other kind affecting matters sought to be regulated by the Act, is unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial; and the courts cannot by mandamus, injunction, or otherwise, control or modify any order of the Commission made by it in the due performance of its merely administrative functions.”

In my opinion this decision requires me to sustain the pending motion to dismiss for want of jurisdiction. The suit is founded upon the defendant's practice of granting unlawful rebates to the plaintiff's competitors, and affects not only the plaintiff but other shippers in the same region. It was a regulation or practice affecting rates, and the fact that it may have ceased does not affect the primary jurisdiction of the Interstate Commerce Commission.

Neither is the court prevented from granting the motion by the facts (1) that the parties agreed to a hearing before a referee, and (2) that the motion was not made until after the referee had reported and the court had heard argument upon objections to his report. Substantially the same situation was presented in the *Morrisdale* case. There the suit had been tried before a jury and a verdict for the plaintiff had been rendered; the motion to dismiss was not made until after the defendant's rule for judgment notwithstanding the verdict had been argued and submitted to the court for determination. The reasons that influenced the circuit court and the court of appeals in the *Morrisdale* case to hold that the Commission has primary jurisdiction of such a controversy are equally influential here, and cannot be overcome by the fact that the parties, either expressly or impliedly, have agreed either to a jury trial or to a hearing before a referee in the first instance.

The motion is granted and the suit is hereby dismissed for want of jurisdiction.

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Session, 1905. No. 4.

MITCHELL COAL AND COKE COMPANY
vs.
PENNSYLVANIA RAILROAD COMPANY.

ALLOWANCE OF EXCEPTION TO PLFF.
Filed January 6, 1911.

And now, to wit, January 6, 1911, on motion of Geo. S. Graham, Esq., attorney for plaintiff above, the Court allows plaintiff the following exception:

1. Exception to the action of the Court in granting defendant's motion to dismiss the above suit for want of jurisdiction.

JOHN B. MCPHERSON,
Dist. Judge.

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Session, 1905. No. 4.

MITCHELL COAL AND COKE COMPANY
vs.
PENNSYLVANIA RAILROAD COMPANY.

PRAEPIPE FOR JUDGMENT.

Filed March 10, 1911.

To the Clerk of the Circuit Court of the United States:

Enter judgment in the above case in favor of defendant and against the plaintiff, in accordance with the Opinion of the Court, filed for want of jurisdiction.

JOHN G. JOHNSON,
Counsel for Defendant.

JUDGMENT.

McPHERSON, J.

And now, to wit, March 10, 1911, in accordance with praeipe filed, judgment is hereby entered in the above entitled case in favor of defendant and against plaintiff, in accordance with the opinion of the Court, for want of jurisdiction of the Court to entertain the action.

BY THE COURT.

Attest:

LEO A. LILLY,
Deputy Clerk.

Inasmuch as the proceedings before the Referee, the testimony heard by him, the papers filed with said Referee, the Opinion of this Court upon the exceptions filed by defendant, defendant's motion to dismiss for want of jurisdiction, the Opinion of the Court in sustaining said motion, the allowance of an exception to the action of the Court in so doing, and the entry of judgment for defendant did not appear upon the record, counsel for plaintiff did then and there tender this, its Bill of Exceptions, to the action of the Court in granting the motion to dismiss plaintiff's case for want of jurisdiction and entering judgment for defendant against plaintiff, and counsel for the plaintiff further requested that the seal of the Court aforesaid should be put to the same, according to the form of the statute in such case made and provided, and thereupon the aforesaid Judge, at the request of said counsel for plaintiff, did put his seal to this Bill of Exceptions, pursuant to the aforesaid statute in such case made and provided, this 10th day of March, A. D. 1911.

JOHN B. McPHERSON, (Seal)
Judge.

Bill of Exceptions agreed to.

J. G. JOHNSON,
Atty. for Deft.

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Session, 1905. No. 4.

MITCHELL COAL AND COKE COMPANY
vs.
PENNSYLVANIA RAILROAD COMPANY.

ASSIGNMENTS OF ERROR.
Filed July 14, 1911.

Mitchell Coal and Coke Company, the plaintiff above named, in connection with its petition for writ of error in the above case to the United States Circuit Court of Appeals for the Third Circuit, makes the following assignments or error which it avers have occurred in the rulings of the Court, as appear by the record of this case:

(1) The learned Court erred in granting defendant's motion to dismiss plaintiff's action for want of jurisdiction.

(2) The learned Court erred in dismissing plaintiff's suit.

(3) The learned Court erred in entering final judgment for defendant against plaintiff.

GEO. S. GRAHAM,
Attorney for Plaintiff.

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Sessions, 1905. No. 4.

MITCHELL COAL & COKE CO.

vs.

PENNSYLVANIA RAILROAD COMPANY.

PETITION FOR WRIT OF ERROR.

Filed July 11, 1911.

*To the Honorable the Judges of the Circuit Court of
the United States for the Eastern District of Penn-
sylvania:*

The petition of Mitchell Coal and Coke Company,
a corporation organized and existing under the laws of
the State of Pennsylvania,

Respectfully represents:

That it is the plaintiff in the above entitled suit,
which was an action of trespass instituted March 14,
1905, to recover damages for unlawful discrimination
in rates on shipments of coal and coke from the mines
of the plaintiff over the lines of the defendant, a com-
mon carrier, to points without the State of Pennsyl-
vania.

By agreement of the parties said cause was re-
ferred to a Referee, who made a report to the Court
setting forth certain findings of fact and conclusions
of law, and directing the entry of judgment in favor of
the plaintiff against defendant for Forty-one thousand
three hundred and seventy-three dollars and sixty-five
cents, to which report certain exceptions were filed by
defendant and duly argued before this Court, and on
November 26, 1910, defendant filed a motion to dismiss

plaintiff's case on the ground that said Court had no jurisdiction thereof, which motion was granted and the case dismissed on January 4, 1911, and in accordance with such dismissal judgment was subsequently entered in favor of the defendant, all of which appears upon said record of this case.

Your petitioner represents that in sustaining defendant's motion to dismiss plaintiff's suit for want of jurisdiction and in entering judgment thereon for defendant against plaintiff, error was, in the opinion of your petitioner, committed in said Court to the prejudice of petitioner, all of which will more fully and at large appear in the assignments of error which have been filed herewith in said suit.

Wherefore petitioner prays that a writ of error may issue in its behalf out of the United States Circuit Court of Appeals for the Third Circuit, for the correction of error so complained of, and that said judgment may be reversed and full and complete justice may be done petitioner in the premises, and that the transcript of the record, proceedings and papers in this case, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Third Circuit.

And, as in duty bound, petitioner will ever pray,
&c.

MITCHELL COAL AND COKE COMPANY,

By GEO. S. GRAHAM,
Attorney for Petitioner.

ORDER ALLOWING WRIT OF ERROR.

Filed July 11, 1911.

And now, to wit, July 11th, 1911, petition and writ of error allowed to the United States Circuit Court of Appeals for the Third Circuit. Bond to be entered in sum of \$500.

JOHN B. McPHERSON,
D. J.

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

No. 4. April Term, 1905.

MITCHELL COAL AND COKE COMPANY,
vs.
THE PENNSYLVANIA RAILROAD COMPANY.

PRAECIPE FOR RECORD SUR WRIT OF ERROR.
Filed July 14, 1911.

To the Clerk of said Court:

In making up the transcript of the record for the purposes of the appeal perfected by the plaintiff July 13th, 1911, to the United States Circuit Court of Appeals for the Third Circuit, you will include the following papers filed in the above case, and no others:

Docket entries,
Statement of Claim, filed November 20, 1905.
Pleas—three.
Replication.
Bill of Exceptions.
Assignments of error.
Petition for writ of error to the United
States Circuit Court of Appeals for the
Third Circuit, and order thereon.
Writ of error.
Citation.

GEO. S. GRAHAM,
By JOHN C. GILPIN,
Attorney for Plaintiff.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNSYLVANIA, } *set.*

I, Henry B. Robb, Clerk of the Circuit Court of the United States of America for the Eastern District of Pennsylvania, in the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original pleas and proceedings in the case of Mitchell Coal and Coke Company, No. 4, April Session, 1905, as per praecipe filed, a copy of which is hereto annexed, on file and now remaining among the records of the said Court in my office.

(SEAL) In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said Court at Philadelphia this fourth day of August, in the year of our Lord one thousand nine hundred and eleven, and of the Independence of the United States the one hundred and thirty-sixth.

HENRY B. ROBB,
Clerk of C. C.

UNITED STATES OF AMERICA, ss:

[SEAL.]

The President of the United States of America to the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Pennsylvania, Greeting:

Mandate.

(Filed April 3, 1912.)

Whereas, lately in the Circuit Court of the United States for the Eastern District of Pennsylvania, before you, or some of you, in a cause between Mitchell Coal & Coke Company, Plaintiff in Error, and Pennsylvania Railroad Company, Defendant in Error, a judgment was duly entered in the said Circuit Court, on the tenth day of March, 1911, as follows:

"And now, to wit, March 10, 1911, in accordance with praecipe filed, judgment is hereby entered in the above entitled case in favor of defendant and against plaintiff, in accordance with the opinion of the Court, for want of jurisdiction of the Court to entertain the action."

as by the inspection of the transcript of the record of the said Circuit Court, which was brought into the United States Circuit Court of Appeals for the Third Circuit by virtue of a writ of error agreeably to the act of Congress, in such case made and provided, more fully and at large appears.

And whereas, in the term of October, in the year of our Lord one thousand nine hundred and eleven, the said cause came on to be heard before the said United States Circuit Court of Appeals on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered and adjudged by this Court, that, on motion to that effect, the writ of error in this cause be, and the same is, hereby dismissed with costs; and that the said Defendant in Error, Pennsylvania Railroad Company, recover against the said Plaintiff in Error, Mitchell Coal and Coke Company, the sum of Twenty Dollars, (\$20.00) for its costs herein expended and have execution therefor.

Philadelphia, January 4, 1912.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said writ of error notwithstanding.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, at Philadelphia, the Second day of April, in the year of our Lord one thousand nine hundred and Twelve.

Costs of Pennsylvania Railroad Company.

Clerk	\$.....
Printing Record.....	\$.....
Attorney	\$20.00
	<hr/>
	\$20.00

SAUNDERS LEWIS, JR.,

Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

U. S. Circuit Court, Eastern District of Pa., April Sessions, 1905.

No. 4.

MITCHELL COAL AND COKE CO.

VS.

PENNSYLVANIA RAILROAD CO.

Certificate of Question of Jurisdiction.

(Filed March 10, 1911.)

The Circuit Court of the United States for the Eastern District of Pennsylvania hereby certifies to the United States Supreme Court that on the tenth day of March, 1911, judgment was entered in the above action pursuant to the decision of this Court granting defendant's motion to dismiss the suit for want of jurisdiction, as will more fully appear by the record in this Court.

And this Court further certifies that in said cause the jurisdiction of this Court is in issue; and further certifies to the Supreme Court of the United States said question of jurisdiction raised by the record in this case, to wit:

Has the Circuit Court of the United States, in advance of any application to the Interstate Commerce Commission and action thereon by that body, jurisdiction to entertain an action of trespass brought by a shipper of coal and coke to recover damages because of alleged unlawful preferential rates accorded to other and competing shippers of coal and coke, when such alleged preferential rates are claimed to have resulted from payments made to such other shippers, which payments the plaintiff claimed were rebates from the published and filed freight rate, and the defendant claimed were made as compensation for services rendered by such shippers or for other accounts which justified it in making the same, and when it further appeared that such payments had been made pursuant to a practice of long standing, and that a number of shippers other than the plaintiff were interested in the question of the lawfulness thereof.

Dated, March 10th, 1911.

J. P. McP., D. J.

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1905.

No. 4.

MITCHELL COAL AND COKE CO.

vs.

PENNSYLVANIA RAILROAD CO.

Petition for Writ of Error.

(Filed April 6, 1912.)

To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Pennsylvania:

The petition of Mitchell Coal and Coke Company, a corporation organized and existing under the laws of the State of Pennsylvania, respectfully represents:

That it is the plaintiff in the above suit, which is an action of trespass instituted March 14, 1905, to recover damages for unlawful discrimination in rates upon shipments of coal and coke from the mines of plaintiff over the lines of defendant, a common carrier, to points without the State of Pennsylvania.

By agreement of the parties said cause was submitted to a Referee who made a report to the Court setting forth certain findings of fact and conclusions of law, and directing the entry of judgment in favor of plaintiff against defendant in the sum of \$41,373.65, to which report certain exceptions were filed by defendant and duly argued before this Court, and on November 26, 1910, defendant moved to dismiss plaintiff's case upon the ground that this Court had no jurisdiction thereof, which motion was granted and the case was accordingly dismissed on January 4, 1911, and in accordance with such dismissal judgment was subsequently entered in favor of the defendant, as more fully appears upon the record of this case.

Your petitioner represents that in sustaining defendant's motion to dismiss plaintiff's suit for want of jurisdiction and in entering judgment thereon for plaintiff against defendant, error was, in the opinion of petitioners, committed, to the prejudice of petitioner, all of which will more fully and at large appear in the assignments of error which are filed herewith in said suit. Wherefore petitioner prays that a writ of error may issue in its behalf out of the United States Supreme Court for the correction of errors so complained of, and that said judgment may be reversed and full and complete justice may be done petitioner in the premises, and that the transcript of the record, proceedings and papers in this case, duly authenticated, may be sent to the United States Supreme Court.

And, as in duty bound, petitioner will ever pray, &c.

MITCHELL COAL AND COKE COMPANY,
By GEO. S. GRAHAM,

Attorney for Petitioner.

Order Allowing Writ of Error.

Before McPherson, J.

And now, to wit, April sixth, 1912, petition and writ of error allowed to the United States Supreme Court. Bond to be entered in the sum of Five hundred Dollars, and the United States Fidelity and Guaranty Company is hereby approved as surety upon said bond.

By the Court:

Attest:

GEORGE BRODBECK,
Deputy Clerk.

In the Circuit Court of the United States for the Eastern District of Pennsylvania, April Sessions, 1905.

No. 4.

MITCHELL COAL AND COKE CO.

vs.

PENNSYLVANIA RAILROAD CO.

Assignments of Error.

(Filed April 6, 1912.)

Mitchell Coal and Coke Company, the plaintiff above named, in connection with its petition for writ of error in the above case to the United States Supreme Court, makes the following assignments of error which it avers have occurred in the rulings of the Court as appear by the record of this Court:

(1) The learned Court erred in granting defendant's motion to dismiss plaintiff's action for want of jurisdiction.

(2) The learned Court erred in dismissing plaintiff's suit.

(3) The learned Court erred in entering final judgment for defendant against plaintiff.

GEO. S. GRAHAM,
Attorney for Plaintiff.

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judges of the District Court of the United States for the Eastern District of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you between Mitchell Coal and Coke Company, Plaintiff, and Pennsylvania Railroad Company, Defendant, a manifest error hath happened, to the great damage of the said Mitchell Coal and Coke Company as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and

full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Third Circuit, together with this writ, so that you have the same at the City of Philadelphia within thirty days, in the said United States Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable the Judges of the District Court of the United States, at Philadelphia, the 10th day of April, in the year of our Lord one thousand nine hundred and twelve.

[Seal of the District Court of the United States, E. D. Penna.]

GEORGE BRODBECK,

Deputy Clerk of the District Court of the United States.

Before McPherson, J.

Allowed.

By the Court:

Attest:

GEORGE BRODBECK,

Deputy Clerk.

UNITED STATES OF AMERICA, ss:

The President of the United States to Pennsylvania Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court, to be holden at Washington, D. C., within thirty days, pursuant to a writ of error filed in the Clerk's Office of the District Court of the United States, Eastern District of Pennsylvania, wherein Mitchell Coal and Coke Company is Plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John B. McPherson, Judge, holding District Court of the United States this 10th day of April, in the year of our Lord one thousand nine hundred and twelve.

By the Court.

Attest:

GEORGE BRODBECK,

Deputy Clerk.

Service accepted.

JOHN G. JOHNSON,

Attorney for Def't in Error.

In the Circuit Court of the United States for the Eastern District of
Pennsylvania, April Sessions, 1905.

No. 4.

MITCHELL COAL AND COKE COMPANY
vs.
PENNSYLVANIA RAILROAD COMPANY.

*Præcipe for Preparing Transcript on Plaintiff's Appeal to the United
States Supreme Court.*

(Filed April 9, 1912.)

To the Clerk of said Court:

In making up and certifying the transcript sur plaintiff's appeal
to the Supreme Court of the United States include the following
papers, and no others:

Docket entries.

Statement of Plaintiff's Claim, filed November 20, 1905.

3 pleas.

Replication.

Bill of exceptions.

Mandate of U. S. Circuit Court of Appeals.

Certificate of question of jurisdiction.

Assignments of error. Filed Apr. 6, 1912.

Petition for writ of error. Filed Apr. 6, 1912.

Order of allowance of writ of error.

Writ of error.

Citation.

Stipulation and order extending time for certifying record.

Præcipe sur transcript of record.

GEO. S. GRAHAM,
Attorney for Plaintiff.

In the District Court of the United States for the Eastern District of
Pennsylvania, April Sessions, 1905.

No. 4.

MITCHELL COAL & COKE CO.
vs.
PENNSYLVANIA R. R. CO.

Stipulation to Extend Time to Prepare Record.

(Filed April 26, 1912.)

It is hereby stipulated between counsel for the respective parties
that the Clerk's time for preparing the transcript of record sur writ

of error to the Supreme Court of the United States be extended to June 15, 1912.

JOSEPH GILFILLAN,
Attorney for Plaintiff.

JOHN G. JOHNSON,
Per J. W. BAYARD,
Attorney for Defendant.

So ordered.

By the Court:

Attest:

GEORGE BRODBECK,
Deputy Clerk.

April 26, 1912.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, set:

I, William W. Craig, Clerk of the District Court of the United States for the Eastern District of Pennsylvania, do hereby certify that the annexed and foregoing is a true and faithful copy of mandate from the United States Circuit Court of Appeals for the Third Circuit, certificate of Question of Jurisdiction, Petition for writ of error, Order allowing Petition for writ of error, Assignments of error, Writ of error, Citation, Præcipe sur transcript and Stipulation to extend time to prepare record in the case of Mitchell Coal & Coke Co. vs. Pennsylvania Railroad Company No. 4 Apr. Sess. 1905 now remaining among the records of the said court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said District Court at Philadelphia, this twenty third day of May in the year of our Lord one thousand, nine hundred and twelve and in the one hundred and thirty sixth year of the Independence of the United States.

[Seal of the District Court of the United States, E. D. Penna.]

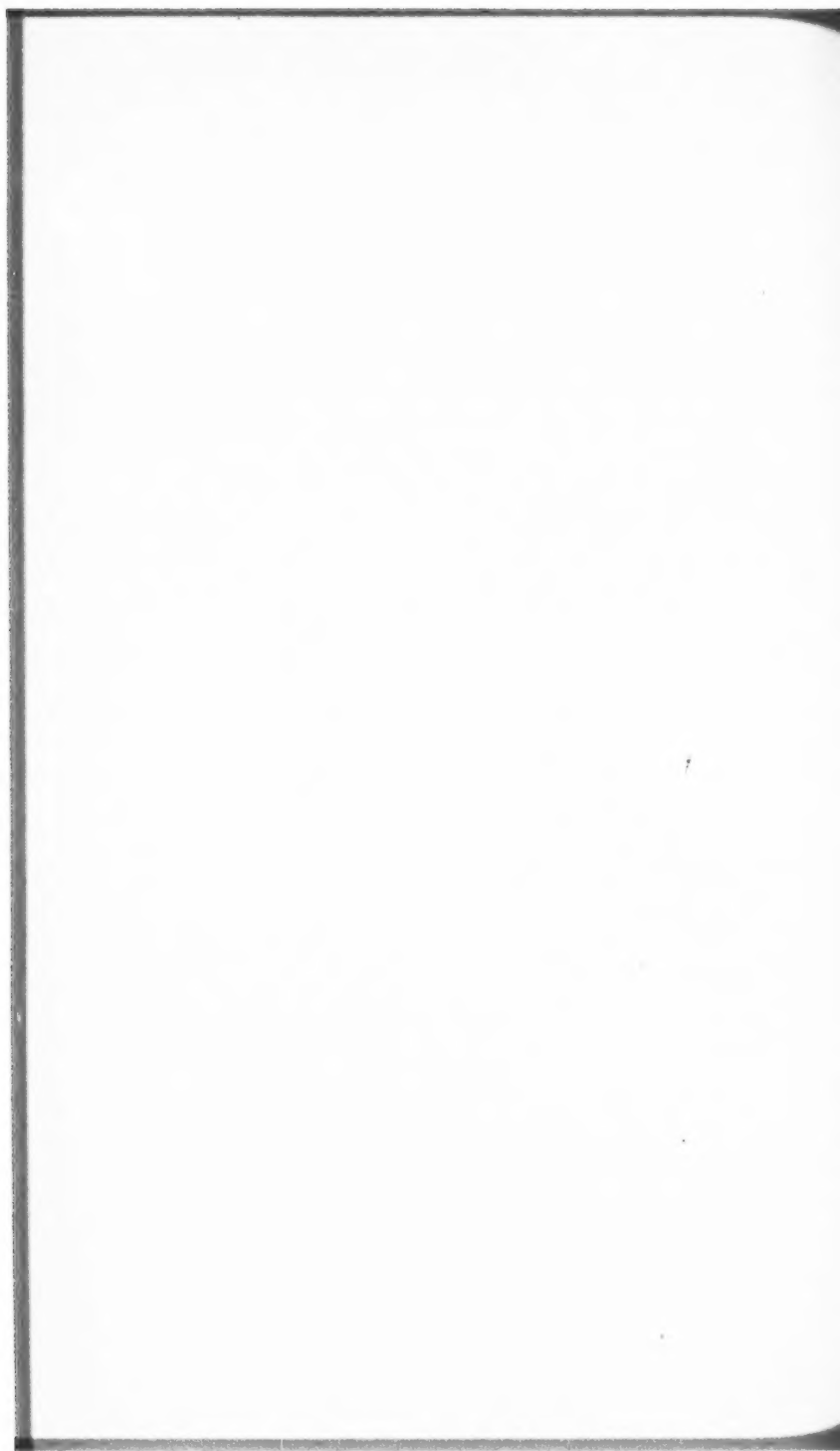
WILLIAM W. CRAIG,
Clerk District Court U. S.,
Per GEORGE BRODBECK,
Deputy Clerk.

[Endorsed:] U. S. District Court. Certified Copy of Record.

Endorsed on cover: File No. 23,249. E. Pennsylvania D. C. U. S. Term No. 674. Mitchell Coal and Coke Company, plaintiff in error, vs. Pennsylvania Railroad Company. Filed June 11th, 1912. File No. 23,249.

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SUPREME COURT OF THE UNITED STATES.

October Term, 1912. No. 674.

MITCHELL COAL AND COKE COMPANY,
Plaintiff in Error,

vs.

PENNSYLVANIA RAILROAD COMPANY,
Defendant in Error.

IN ERROR TO THE DISTRICT COURT OF THE
UNITED STATES FOR THE EASTERN
DISTRICT OF PENNSYLVANIA.

BRIEF OF PLAINTIFF IN ERROR.

I. STATEMENT OF THE CASE.

The period of this action was from 1897 to 1901, and the action was brought in the Circuit Court (now District Court) for the Eastern District of Pennsylvania. After the statement of claim was filed and the issue made up ready for a jury trial, the parties entered into a stipulation as follows:

Statement of the Case.

In the
CIRCUIT COURT OF THE UNITED STATES
For the Eastern District of Pennsylvania.

April Term, 1905. No. 4.

MITCHELL COAL AND COKE COMPANY
vs.
PENNSYLVANIA RAILROAD COMPANY.

STIPULATION.

Filed June 2, 1910.

It is agreed that all questions of law and fact in this case shall be submitted to Hon. Theodore F. Jenkins, as Referee, whose duty it shall be to take testimony; to report the same to the Court; to report Findings of Fact and Conclusions of Law; also to report whether judgment should be entered for plaintiff or for defendant, and, if judgment should be entered for the plaintiff, in what amount.

The Referee shall have all the powers of a Master in Chancery, and his final report shall have the same force and effect which would attach to a report of a Master in Chancery.

Either party shall have a right to file exceptions with said Referee within fifteen days of written notice of intention to file his report.

It shall be the duty of the Referee to report any such exceptions so filed with him, together with any matter which he may deem pertinent by way of fact or law, in connection therewith.

The Court shall hear the case upon said report as though said report were that of a Master in Chancery, and shall enter such judgment thereon as it shall deem proper.

Either party shall have a right to appeal from the judgment of the Court, entered upon said report and exceptions to the Circuit Court of Appeals. The record upon said appeal shall include the testimony taken by the Master.

The judgment of affirmance or reversal by said Circuit Court of Appeals shall be subject, like any other judgment by said Court, to the right of the parties to petition the Supreme Court of the United States for certiorari.

The employees of the defendant shall appear before the Referee upon reasonable notice, without the necessity of service of the subpoena. All relevant books and papers will be produced before the Referee.

Unless the plaintiff shall desire otherwise, the hearing before the Referee will proceed de die in diem. Both parties will facilitate the hearing and determination of the case.

GEO. S. GRAHAM,
Attorney for Plaintiff.

JOHN G. JOHNSON,
Attorney for Defendant.

April 24-07.

The said Hon. Theodore F. Jenkins, Referee, filed a report (page 337, Record), finding in favor of the plaintiff in error and awarding damages in the sum of \$42,373.65. Exceptions were filed to the said Referee's report, upon which, after argument, the Circuit Court (now District Court) rendered an opinion in which it was indicated that certain findings of fact and law by the Referee were sound, and certain findings of fact by the Referee were unsound. The Court did not, however, formally either affirm or dismiss any of the exceptions, but left the case open in such a way that the fair inference from the opinion was that the report was to go back to the Referee for further testimony and further consideration by the Referee. Before anything was done the defendant in error filed a petition to dismiss the whole case for want of jurisdiction in the Court, and the Court, after argument, granted the motion and dismissed the case for want of jurisdiction. At this point it was thought that the proper procedure was to appeal directly to the United States Supreme Court, but in order to make sure of the ground an appeal was taken to the United States Circuit Court of Appeals for the Third Circuit, in which the question was argued whether the appeal on the question of jurisdiction should have been direct to the United States Supreme Court or to the United States Circuit Court of Appeals. The United States Circuit Court of Appeals decided that under the authorities it had no jurisdiction to entertain the question as to whether the dismissal of the case by the United States Circuit Court for want of jurisdiction was proper, and refused to pass on the question, the following language being taken from the opinion of the United States Circuit Court of Appeals (a copy of the said opinion being hereto attached, marked "Exhibit A"):

"We are not considering whether there is error in the dismissal of the case by the Court below, for want of jurisdiction in it, but whether there is appellate jurisdiction in this Court, and therefore whether the ques-

tion of jurisdiction raised in the Court below was one involving the jurisdiction of that Court, as a Federal Court, and not simply its general authority as a judicial tribunal."

It was then thought best, as a matter of precaution, to have a certiorari issue from your Honorable Court to the United States Circuit Court of Appeals, and have the question determined whether the Circuit Court of Appeals was correct in refusing to interfere in the case. This petition, however, your Honorable Court denied, thereby affirming the propriety of the opinion of the Circuit Court of Appeals in refusing to entertain the question on appeal. In this state of the record, of course, there was nothing to do but to appeal directly to your Honorable Court on the question of jurisdiction, jurisdiction being the only question involved in this appeal; hence this present proceeding.

A concise statement of the facts is as follows:

During the period of the action, from 1897 to 1901, and for some years prior thereto, the plaintiff in error owned certain collieries situated in the district known as the Clearfield region of Pennsylvania, in the coal trade. The defendant in error was and is a common carrier, which tapped the Clearfield region, and the only railroad that did tap it. In this same Clearfield region there was the Altoona Coal and Coke Company and the Glen White Coal and Lumber Company. In the region just west of the Clearfield region is a region known as the Latrobe region, which, in the early part of the period of this action, had a little higher rate on coal to the eastern markets (where all these shipments went), but during the latter part of the period carried the same freight rate on coal to the eastern markets as the Clearfield region, so that after April 1, 1899, the freight rate on coal from Latrobe to the eastern markets was the same as the freight rate from the Clearfield region to the eastern markets. In the Latrobe region

was situated the Millwood Coal and Lumber Company, the Bolivar Coal and Coke Company and the Latrobe Coal Company. The Pennsylvania Railroad was likewise the only common carrier that tapped the Latrobe region. The Altoona Company, the Glen White Company, the Millwood Company, the Bolivar Company and the Latrobe Company all received secret rebates, varying in amount. The Altoona Company had a short lateral railroad which it operated as a plant adjunct, between three and four miles in length, running from the mines to the tracks of the Pennsylvania Railroad; and the Glen White Company had a lateral line, used as a plant adjunct, of about three miles in length, running to the tracks of the Pennsylvania Railroad. Both of these companies had a small engine to take the loaded cars down to the tracks of the Pennsylvania Railroad and to bring the empty cars back to the mines. The Latrobe Company had a little line of railroad three-quarters of a mile long, but had no engine to take the loaded cars down and bring the empties back, this work being done by the Pennsylvania Railroad. The Millwood Company had a similar little lateral between the mines and the tracks of the Pennsylvania Railroad, of about two and one-half miles long, and the Bolivar Company had a similar lateral railroad of a mile in length.

The various mines of the plaintiff in error contained small lateral railroads, running from the mines to the tracks of the Pennsylvania Railroad, similar to the railroads of the above mentioned favored shippers, except as to length, the length of the lateral railroads of the plaintiff in error being from one-third to a mile in length; and one of the mines of the plaintiff in error (which, by the way, had seven mines in the region), called the Gallitzin mine, in the Clearfield region, had one mile of such short railway and supplied the locomotive and crew, from October, 1899, to May, 1901, to take down the loaded cars to the tracks of the Pennsylvania Railroad and bring the empty cars back to the mines.

On all these short spurs of railroad, whether the mine supplied the motive power or not, no other commodity was

transported, except the commodity of the particular mine to which the short railway was an adjunct, and the tariffs of the Pennsylvania Railroad showed the freight rate to be from the nearest station on the tracks of the Pennsylvania Railroad to the point of destination, and not from the mines of the various coal companies. The Pennsylvania Railroad Company, the defendant in error, about the year 1890, began giving secret rebates to the Altoona, Glen White and Latrobe companies. These rebates, from the time of their beginning down to long after the ending of the period of this action, were never noted on the tariffs filed with the Interstate Commerce Commission, and were given under the name of "Terminal allowances." The rebates that were given were as follows:

To the Altoona Coal and Coke Company was given 13 cents per ton on coal, and 10 cents per ton on coke, if the shipments went to points on the Hollidaysburg branch of the Pennsylvania Railroad; and 18 cents per ton on coal and 20 cents per ton on coke if the shipments went to points east of Altoona.

No special reason was assigned why there should be the different allowances made depending upon the destination of the coal or coke, because the same amount of service and labor was required by the Altoona Company to get the coal and coke to the tracks of the Pennsylvania Railroad, whether the destination was on the Hollidaysburg branch or whether it was east of Altoona; and it is to be noted in passing that no claim is made on any shipments of coal and coke in this action, by the plaintiff in error, except those that were interstate shipments.

To the Glen White Coal and Lumber Company was given a secret rebate of 15 cents per ton on both coal and coke, whether the coal or coke was delivered to a point on the Hollidaysburg branch of the Pennsylvania Railroad or to a point east of Altoona.

To the Millwood Coal and Lumber Company was given a secret rebate of 15 cents per ton on coal until April 1, 1899, and thereafter 10 cents per ton on coal, without regard to where the shipment went.

To the Boliver Coal and Coke Company a secret rebate was given of 15 cents per ton on coke, regardless of the point of destination.

To the Latrobe Coal and Coke Company (which had no engine to carry the loaded cars down to the tracks of the railroad and bring the empties back, but which work the Pennsylvania Railroad itself did) was given a secret rebate of 10 cents on both coal and coke, regardless of the point of destination.

The plaintiff in error received no rebate or allowances whatever, but paid the published tariff rate in full. This continued down to the latter part of 1901, when the defendant in error, without consultation with any of the favored shippers, took away altogether the rebate on coke and reduced the allowance on coal to twelve cents per ton as to the Altoona Company; took away all the allowance on coke, but left the fifteen cents per ton rebate on coal as to the Glen White Company; took away altogether the allowance on both coal and coke as to the Latrobe Company, and took away the fifteen cents per ton rebate allowed on coke to the Boliver Company (pages 48-49, Record). The rebates were taken away or modified just as they were given, at the whim or caprice of the Railroad company. The shipments involved in this case were from initial points to similar destinations; the initial points being all in the one group made by the railroad company and carrying the Clearfield rate, and, therefore, were shipments from similar points to similar points. No effort was made by the railroad, the defendant in error, to justify these payments by showing the cost per ton to the favored shippers for getting the coal down to the railroad

tracks, nor was any effort made to show the cost of constructing the lateral railroads, or the cost of operating the same in carrying the tonnage of the particular mine or mines down to the tracks of the Pennsylvania Railroad; nor was any reason given why the plaintiff in error should not have received allowances when it performed similar services.

The Referee, in fixing the damages, took as the measure the price paid to the most favored shipper, to wit, the Altoona Coal and Coke Company. None of these secret rebates, or, indeed, the abolition or modification of part of them in 1901, were ever noted on the tariffs, and the rebates, during the period of the action, were paid to the favored companies regardless of the time of shipment, the point of destination, or whether the coal was sold f. o. b. the mines or at a delivered price by the favored shippers. When the plaintiff in error discovered the amounts of these rebates it brought this action in the Circuit Court of the United States for the Eastern District of Pennsylvania, on the ground that no application was necessary to the Interstate Commerce Commission in the first instance—that the law fixed, *ipso facto*, the moment the rebate was given, that the injured shipper was entitled to the difference between what he paid and what the favored shippers paid, where the shipments were from similar points to similar points and under similar circumstances and conditions, and especially when the rebates were not noted on the tariffs filed with the Interstate Commerce Commission. In other words it does not need the administrative function of the Interstate Commerce Commission to declare the wrong, because the act itself declared that it was wrong the moment that the rebate was given.

The questions therefore presented are:

- (1) Where a railroad in a given district which carries the same freight rate, gives to four or five of the competing shippers a rebate varying in amount amongst the favored shippers, without regard to the value of the services alleged to have been rendered

by the favored shippers, and without having noted on the published tariffs the fact of such rebates being given, and gives no rebate or allowance of any kind to the other shippers in the same district, shipping to competing points, can the railroad compel the injured shipper to first make application to the Interstate Commerce Commission for redress, on the ground that the rebate was given to the favored shippers because of services rendered, the services rendered being the carrying of the coal from the mines of the favored shippers to the tracks of the railroad over a little lateral railway running from the mines to the railroad, used exclusively by the favored shippers for this purpose, and when other shippers did like service for the railroad and received no rebate, the favored shippers' rebate being a departure from the published tariff rates, and the unfavored shippers paying the tariff rates? In other words, is this not a case where, under Section 9 of the Interstate Commerce Act, the Courts are left open to the injured shipper in the first instance?

(2) Whether, by reason of the stipulation filed by the parties, referring the case to Hon. Theodore F. Jenkins, Referee (pages 25 and 26, Record), the railroad is not precluded at this late day from raising the question of jurisdiction?

II. ASSIGNMENTS OF ERROR.

(1) The learned Court below erred in granting the motion of the defendant in error to dismiss the action of the plaintiff in error for want of jurisdiction.

(2) The learned Court below erred in dismissing the suit of the plaintiff in error.

(3) The learned Court below erred in entering final judgment for defendant in error against plaintiff in error.

III. ARGUMENT.

(a) JURISDICTION.

The defendant in error raised this question of jurisdiction after it had taken its chances on the merits of the case, and also after it had specifically agreed to a reference to a Referee to hear and decide the matter. It was only after the Referee found against the defendant in error that the question of jurisdiction was raised. But on the assumption that this question of jurisdiction is of such a nature that it could be raised at any time (although this is denied, and will be discussed later), let us examine the question from this standpoint.

The sections of the Interstate Commerce Act which directly affect this case are:

SECTION 2. "That if any common carrier, subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."

SECTION 8. "That in case any common carrier subject to the provisions of this act shall do, cause to

be done, or permit to be done any act, matter, or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the Court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case."

SECTION 9. "That any person or persons claiming to be damaged by any common carrier subject to the provisions of this act MAY EITHER MAKE COMPLAINT TO THE COMMISSION AS HEREINAFTER PROVIDED FOR, OR MAY BRING SUIT IN HIS OR THEIR OWN BEHALF FOR THE RECOVERY OF THE DAMAGES FOR WHICH SUCH COMMON CARRIER MAY BE LIABLE UNDER THE PROVISIONS OF THIS ACT, IN ANY DISTRICT OR CIRCUIT COURT OF THE UNITED STATES OF COMPETENT JURISDICTION; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. In any such action brought for the recovery of damages the Court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying,

but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding."

There is no dispute in this case but that Section 2 prohibits secret rebating and refunding such as was done in this case, and there is no dispute but that Section 8 gives to the injured shipper a right to be compensated in damages, but the dispute on the question of jurisdiction arises in connection with Section 9. At the time the Interstate Commerce Commission Act was passed, and for some years afterwards, both injured shippers as well as the legal profession, assumed that Section 9 meant exactly what it said, to wit, that the injured shipper could either go into the United States Courts or to the Interstate Commerce Commission in order to secure justice by making the railroads atone for their violations of the Act, and it was not until the decision of the United States Supreme Court in the case of the Texas & Pacific Railway Company vs. Abilene Cotton Oil Company, 204 U. S., 426, that this assumption was partially shattered. In this last-mentioned case it was decided that Section 9 must suffer a partial implied repeal where the complaint is made against a schedule as filed with the Interstate Commerce Commission on the grounds that the rates were unreasonable or unjustly discriminatory, and that in such cases there must be resort first to the Interstate Commerce Commission to correct the inequality as it appears from the published and filed schedule, the Court saying that it was necessary to invoke that which is repugnant to the law, namely, implied repeals, in order to preserve the integrity of the Interstate Commerce Act as a whole; the underlying principle of the decision being that when a schedule was filed in accordance with law it must stand until it is attacked, and you must have some place where you begin with a standard schedule of rates, and as these schedules are on file with the Commission, and, therefore, open to inspection and objection by shippers, the proper procedure is to go before the Commission to correct them, on the theory that the whole schedule, made up of various rates,

is so interdependent that it would create the greatest confusion to allow juries in different sections of the country to be dealing with the same published rate, and, perhaps, arriving at different and various decisions. But the Court also said that the right of the shipper to go into the United States Court was left undisturbed where it could be accomplished in general harmony with the Interstate Commerce Act, and the contention of the plaintiff in error in this case is that the resort to the United States Court and the correction of the wrongs done by the defendant in error will not interfere with the administration of the Interstate Commerce Act, because the most that could be accomplished by juries at any place would be to impose damages upon the railroad for secretly departing from the rates which it filed. In other words, any judgment that might be rendered in the Courts to correct secret rebates would have a tendency to keep the published rate uniformly applied by the railroad to the commodity shipped by shippers over its lines. There is a reason for not disturbing the published schedule of rates except by going to the Interstate Commission, so that the matter of rates would be kept uniform, but there is no reason why a shipper should not, under Section 9, go into the Circuit Court, not to correct the published rates, but to recover damages against the Railroad for secretly departing from the published rates. In other words, when the shipper goes into the United States Court to secure damages from the railroad for its secret departure from its published rates it helps thereby to preserve the uniformity and equality of the rates that the Railroad itself had published and filed, and instead of tending to destroy the uniformity of the Interstate Commerce Act it has the opposite tendency, to wit, compelling the Railroad to adhere strictly to its published schedule of rates and thereby insuring uniformity. The point in the Abilene Oil case dealt with published rates, and the decision did not purport to cover a case like this, where by no stretch of the imagination could the verdict of a jury interfere in the slightest with the uniform application of published schedules of rates. This is

made clear by the United States Supreme Court in the case of Southern Railroad Company vs. Tift, 206 U. S., 428, where, referring to the Abilene Oil case, it was said:

"The judgment was reversed by this Court on the ground that the State Court had no jurisdiction to entertain a suit based on the unreasonableness of the rate AS PUBLISHED, in advance of the action of the Interstate Commerce Commission adjudging the rate unreasonable."

In view of this decision it cannot seriously be contended that a shipper must go to the Interstate Commerce Commission to correct what has never been published as a rate. To do this the Court will of necessity be compelled to practically repeal Section 9, and it is a well known principle of law that Courts are against implied repeals at best, and in connection with the construction of the Interstate Commerce Act, Section 9 was judicially determined to mean what was held in the "Abilene Oil case," because in the opinion of the Court the necessities of the case required it. But in this case there are no such necessities, for, if the contention of the defendant in error prevails, it means nothing more or less than that Section 9 of the Interstate Commerce Act would be practically and substantially repealed in its entirety. If this had been in the mind of the Court there would have been some indication in the opinion of this fact, and the following language would not have been contained in that opinion:

"In other words, we think that it inevitably follows from the context of the Act that an independent right of an individual originally to maintain actions in courts to obtain pecuniary redress for violations of the Act, conferred by the 9th section, must be confined to redress of such wrongs as can, consistently with the context of the Act, be redressed by courts without previous action by the Commission, and,

therefore, does not imply the power in a court to primarily hear complaints concerning wrongs of the character of the one here complained of."

It is evident that the Court still thought there was some virtue in the phraseology of Section 9 which left the injured shipper the right to resort to Courts in the first instance.

The position of the defendant in error in this case is substantially that no injured shipper can resort to the Courts unless he has first had an order from the Interstate Commerce Commission awarding him reparation. While the defendant in error does not say this in so many words, the fact is that the logical conclusion of its argument inevitably leads you to this result, and if this is so it is surprising that the Supreme Court in the Abilene Oil case did not say so in so many words, instead of saying "must be confined to redress of such wrongs as can, consistently with the context of the Act, be redressed by courts without previous action by the Commission." There must still be some wrongs that the courts can redress in the first instance under Section 9, and we submit that the wrongs involved in this case are such wrongs.

It may be said that while this is true as to published rates, it is not true as to regulations or practices affecting rates, but there can be no reasonable separation between rates and regulations or practices that affect rates. The law now insists that to correct published rates you must go to the Interstate Commerce Commission. It is equally true that the same rule will apply if you desire to correct published regulations or practices affecting rates. But in order to bring regulations or practices affecting rates within the rule of the Abilene Oil case they must be published so that the shipper will be informed of the railroad's attitude, and when the railroad has a secret regulation or practice affecting rates it is nothing more or less than a departure from the published rate, because it is supposed that the published rate covers the situation fully, unless the regulation or practice affecting the

rate is also published in connection with the rate, and when the defendant in error attempts to shield itself behind the fact that this is a regulation or practice affecting rates, and, therefore, for the sake of uniformity, you must go to the Interstate Commerce Commission, it is simply an attempt to evade the doctrine of the Abilene Oil case; and when the injured shipper resorts to the courts for the purpose of correcting a secret departure from the published rate, it makes no difference whether it is in the form of a regulation or practice affecting rates, or whether it is a pure gratuity. In either case it is destructive of the uniformity as implied in the filing of the published rate. The published rate is the full rate, and when you take from that rate by a secret refund or rebate and give it to a favored shipper, you are violating the Act and violating the published rate as provided for in the Act, and it is none the less a violation to say that it is in accordance with some secret regulation or practice, which is in effect a pure rebate from the published tariff rate.

But we will go further and say that it is a misnomer to call what was done in this case a regulation or practice affecting rates. There was no basis upon which the favoritism was measured. There were no standards by which comparisons could be made. There was nothing but the whim of the Railroad or its gratuitous inclination toward certain shippers, and it gave or took away these secret rebates at will, and without consultation with or acquiescence upon the part of those upon whom the favor was conferred. It is conceivable that there might be a regulation or practice by which some reasonable allowance could be made, based upon some fixed standard, as for instance the cost of the construction and maintenance of the laterals, or a rental, or some other form of charge based upon a fixed standard, that could be dignified by the phrase "regulation or practice affecting rates," and which, if filed with the Interstate Commerce Commission, would have to be attacked with convincing testimony to show that it was in fact only a blind or subterfuge to cover the giving of unlawful rebates; but there is nothing of that in

this case. The allowances had no limitations except the whim or caprice of the railroad. For instance, so far as the evidence shows, there were three shippers in the Clearfield region, to wit, the Altoona, Glen White and Latrobe companies, that received allowances. The Altoona received thirteen cents per ton rebate on coal and ten cents per ton rebate on coke, if the shipments went to a point on the Hollidaysburg branch of the Pennsylvania Railroad, but the rebate was eighteen cents per ton on coke and twenty cents per ton on coal if the shipments went to a point east of Altoona. The Glen White Company received fifteen cents per ton rebate on coal and fifteen cents per ton rebate on coke no matter where the shipments went. Both of these companies had little laterals as plant adjuncts, and furnished the motive power to carry the loaded cars down to the tracks of the Pennsylvania Railroad and to take the empty cars back to the mines. The Latrobe Company received ten cents per ton rebate on all coal and coke shipped, no matter where the shipment was destined. The Latrobe Company had a small lateral as a plant adjunct, but had no locomotive, the Pennsylvania Railroad Company, the defendant in error, doing the work. The Mitchell Coal and Coke Company, the plaintiff in error, had small laterals to all of its mines, and in addition to the one mile lateral at the Gallitzin mine furnished, from October, 1899, to May, 1901, the engine to take the loaded cars down to the tracks of the Pennsylvania Railroad and return the empty cars to the mines; but the Mitchell Company, the plaintiff in error, received no rebate and got no allowance for any of its mines, including the Gallitzin. And then, there is another company, about which, unfortunately, the plaintiff in error had no means of ascertaining at the trial of the case, but which has since become common knowledge in the coal field, that of the Pittsburgh, Johnstown, Ebensburg and Eastern Company, which had a lateral railroad thirty miles long, and it was likewise refused any allowance. It is evident that the gratuity as to the Altoona Company differed in amount, depending upon whether the coal and coke went to a point on

the Hollidaysburg branch of the Pennsylvania Railroad (which was a short haul), or to the eastern markets, east of Altoona (which was a longer haul), although the cost to the Altoona Company was the same to get the coal and coke down to the tracks of the Pennsylvania Railroad, no matter where the shipments finally went. Then the gratuity as to the Glen White had no such distinction in it—it was fifteen cents per ton on coal and coke, no matter where the shipments went. If the suggestion is made that it was on account of the Altoona and Glen White companies doing some work by bringing the coal down to the tracks of the Pennsylvania Railroad, then what was the reason for making the allowance to the Latrobe Company, which had no engine and did no such work, and which had a shorter lateral than even the laterals connected with the mines of the plaintiff in error? Then, over and above all this, the treatment of the Pittsburgh, Johnstown, Ebensburg and Eastern Company emphasizes the fact that it was according to no plan or regulation, but simply a gratuity or secret helping of the favored shippers as against other shippers in the field. Surely this is not what is meant when the law refers to existing regulation or practices affecting rates. And it is to be noted here that we by no means admit that even if there were existing regulations or practices affecting rates, that by reason of that we would be compelled to go into the Interstate Commerce Commission if the regulation or practice were not filed of record. On the contrary, all through this discussion we wish it to be understood, and we stoutly maintain, that unless existing regulations and practices affecting rates were filed the same as rates were required to be filed, that resort could be had to the Court in the first instance. The only reason that the defendant in error attempts to rely on existing regulations and practices is because it thinks these things require the administrative hand of the Commission to adjust and settle, and it attempts to take these few isolated instances of favoritism and make them the basis for asserting that this produced a general practice in the coal fields which affected everybody, and which

of necessity must be passed upon by the Interstate Commerce Commission before resort can be had to the Courts, and it boldly asserts its wrong-doing in these instances as the prop upon which it hopes to drive the plaintiff in error out of Court. But it will take little reflection to show the absurdity of its claim. If one shipper in the Clearfield district was allowed fifty cents per ton for a half a mile lateral railroad, it would, of course, in a measure, affect all other shippers in the field, because the law says that all should be treated alike and all should receive the same allowance as the favored shipper. But who could be heard to maintain that this amounted to a practice affecting the general business of the railroad, and therefore, in order to try and keep the matter uniform a shipper should not be allowed to go into Court and say to the railroad: You have violated the law: you have given fifty cents to a shipper who has a short lateral railway: you have given nothing to me in the nature of a refund or rebate, and I propose to make you pay me the difference between the net charge to the favored one and the net charge to me? It requires no administrative function to determine that this fifty cents would be a rebate, and that if it was attempted to use the lateral railway as an excuse that the use of the said lateral railway would only be a subterfuge.

The defendant in error will no doubt refer to the case of Baltimore and Ohio Railroad Company vs. Pitcairn Coal Company, 215 U. S., 481, but it is submitted that this case has very little relevancy to the matter at hand. That case was an action for a mandamus on behalf of the Pitcairn Coal Company to forbid the Baltimore and Ohio Railroad Company from distributing its cars according to the system of distribution then in force. The Railroad Company had a general plan for rating the mines which formed the basis for a pro rata distribution, according to this rule of rating. The Pitcairn Coal Company objected to the basis for the rating and applied for a mandamus, which was granted in the lower Court, but the judgment was reversed in the United States Supreme Court. The United States Supreme Court stated

that the Courts could not go into and examine the factors that went to make up the basis for car distribution; that that was a matter of administration which must be performed by the Interstate Commerce Commission. The rule for the car distribution was a general rule of the railroad, but unlike the rules governing rates it did not have to be published at Washington, but everybody knew it and every shipper was subject to it, and if it was wrong in its make-up the proper place to redress it would be before the Interstate Commerce Commission, the same as the proper place to redress a rate wrong in its make-up, and which make-up has been filed as the published schedule at Washington, is before the Interstate Commerce Commission. The Pitcairn case, like the Abilene case, inferentially supports the position of the plaintiff in error in this case. At page 499, referring to the actions that could be brought in the first instance in Court, it is said that they

“must be limited either to the performance of duties which are so plain and so independent of previous administrative action of the Commission as not to require a prerequisite exertion of power by that body, or to compelling the performance of duties which plainly arise from the obligatory force which the statute attaches to orders of the Commission, rendered within the lawful scope of its authority.”

It is evident from this quotation that the Supreme Court, as in the Abilene case, still thought that there were cases that could be redressed in the first instance by the Courts, and these were such where the rights were fixed by law and which did not require the administrative functions of the Interstate Commerce Commission. We say that applies exactly to the case at bar, because the secret rebates were not part of any plan, either open or secret, but were arbitrary gratuities, without reference to any general scheme for handling traffic by the railroad company.

Another case to which reference will be made by the

defendant in error is the case of *Robinson vs. Baltimore and Ohio Railroad Company*, 222 U. S., page 506, but an examination of that case makes it apparent that it does not change in the slightest the scope of the decision in the *Abilene Oil* case, except to hold that where the charge is that the rate is unjustly discriminatory that the Interstate Commerce Commission has primary jurisdiction, just the same as where it is alleged that the rate is unreasonable, but mark you in both cases the rates complained of were filed and published, that is to say, in the *Abilene Oil* case the charge was that the rate as published was unreasonable. In the *Robinson* case the charge was that the rate as published and filed was unjustly discriminatory. The point of the *Robinson* case, so far as this case is concerned, appears from the syllabus:

"Investigation by the Interstate Commerce Commission and an appropriate finding and order are prerequisite to the right of a shipper to maintain an action to cover from a carrier the excess which he claims to have paid under a REGULARLY ESTABLISHED AND PUBLISHED RATE which is attacked as unjustly discriminatory, notwithstanding the provisions of the Act of February 4, 1887 (24 Stat. at L. 379, chap-104, U. S. Comp. Stat., 1901, p. 3154), Sect. 22, that nothing therein contained 'shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies.'"

It is evident that the *Robinson* case does not undertake to settle the question as to what is the rule when the charge is for a departure from the published rates and a departure in isolated and irregular instances, without any fixed basis for such departure.

Another case that may be cited by the defendant in error is the case of the *Morrisdale Coal Company vs. Pennsylvania Railroad Company*, 183 Federal Reporter, page 929 (Circuit

Court of Appeals for the Third Circuit), but this case likewise dealt with a rule for car distribution, and did not deal with the question of rates at all, and the decision in that case can be summed up in the following language:

A party claiming to be injured by a discriminatory RULE for the distribution of coal cars by an Interstate Railroad cannot maintain in a Court of law an action for the recovery of damages before the Interstate Commerce Commission has investigated the case and determined by its report that the rule is or was discriminatory.

It is quite evident that a mere reading of the facts of the Morrisdale case is convincing that it is not an authority on the questions involved here. The defendant in error will, we think, extract certain language from the opinion of the Court, and thereby attempt to show that the case really is an authority for the case at bar. The language referred to is as follows:

"These cases conclusively establish the doctrine that the Interstate Commerce Commission alone has original jurisdiction to determine whether an existing rate schedule, or an existing regulation or practice affecting rates, or an existing regulation or practice of any other kind affecting matters sought to be regulated by the Act, is unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial."

Of course, a part of this language outran the facts of the case. There was nothing in dispute so far as existing rate schedules or existing regulations or practices affecting rates are concerned. There was involved just what Justice Lanning said in opening his opinion, to wit:

"The claim of the plaintiff is that the distribution of coal cars amongst the mines of the Clearfield coal

region of Pennsylvania, in which the plaintiff's mines are located, and the mines in other coal regions during the years 1900 to 1905, inclusive, was unduly and unreasonably prejudicial and disadvantageous to the plaintiff. The RULE under which that condition was based was abolished by the Railroad Company on June 1, 1906, when it adopted and put into operation a new RULE of distribution."

It is quite apparent that the question involved in the Morrisdale case was the rule or basis for distribution of coal cars, with the added question that the plaintiff in the Morrisdale case having commenced his suit two years after the rule of distribution complained of had been abolished, whether he was within the principles of law made by the judicial decision in the Pitcairn Coal case, that required him to go to the Interstate Commerce Commission in the first instance; and, it was held that the rule for distribution, being a general rule of the company, resort should have been first had to the Interstate Commerce Commission; and the Court also decided that the mere fact that the rule had ceased to exist did not take away the primary jurisdiction of the Interstate Commerce Commission, because the rights that the plaintiff was attempting to enforce really arose under that rule, and the Interstate Commerce Commission must first find whether the rule was unjustly discriminatory.

A case that illustrates our position is the case of *Lyne vs. D., L. & W. Railroad Co.*, 170 Federal Reporter, page 847, in which Lanning, District Judge, said:

"If the present action were one for the recovery of charges made by the defendant company on the ground that they were unreasonable, it could not, as I understand the Cotton Oil Company's case, be maintained under the authority of section 9. But it seems to me that a judgment for the plaintiff against the defendant in the present case cannot disturb or affect the

Interstate Commerce Commission in the exercise of any of its powers. Section 6 of the Interstate Commerce Act, as amended June 29, 1906, provides that every common carrier shall file with the United States Commerce Commission, and print and keep open to public inspection, schedules, which, amongst other things, shall 'state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission shall require, all privileges and facilities granted or allowed, and any rules or regulations which could in any wise change, affect or determine any part or the aggregate of such aforesaid rates, fares and charges, or the value of the service rendered to the passenger, shipper, or consignee.' The declaration avers that the defendant's published rate of storage charges up to November 1, 1906, was \$1 per car per day after the expiration of 48 hours allowed as 'free time.' The complaint is that Bahrenburg & Bro. were allowed to keep cars of produce consigned to them at Newark freight yard after the expiration of the 'free time,' while the same privilege was denied to the plaintiff. This, it is alleged, was an undue and unreasonable preference and advantage afforded to Bahrenburg & Bro., in violation of the Act, and injurious to the plaintiff. I think the declaration is not defective in the respect above referred to."

A case that is illuminating as showing how the Court will prevent rebates, no matter what the device or form, is the case of the Chicago and Alton Railway vs. United States, 156 Federal Reporter, page 558, which was a prosecution for violation of Section 1 of the Elkins' Act prohibiting the giving of any rebate in respect to the transportation of any property in interstate or foreign commerce, whereby any such property shall, by any device whatever, be transported at a less rate than published and filed. There the S. & S. Packing plant at Kansas City owned a mile and a half of track about

the plant, connecting with the Belt Line Railroad, which published a \$3.00 rate for delivering cars on its line to the Chicago and Alton Railway Company. The Chicago and Alton Railway Company published rates from Kansas City to seaport points, including Belt Line charges. The Chicago and Alton collected the entire rate, paid \$3.00 to the Belt Line, and also paid to the S. & S. Packing Co., the shipper, \$1.00 per car "refund of terminal charges." Offer to prove use of S. & S. tracks was reasonably worth \$1.00. Offer refused. HELD: a rebate. The Court said:

"The real transaction was the payment by the Chicago & Alton for the use of the S. & S. tracks in getting S. & S. freight out of the plant to the Belt Line. The S. & S. tracks were not a part of the railroad's highway. They were not used by the railroad in serving the shipping public generally. Their only use was in getting a particular shipper's freight from his own property out to the public highway."

This case, while a prosecution for a violation of the Elkins' Act contains the principle that should apply here.

But the most pertinent discussion of the principles that should rule this case is to be found in the case of *Wight vs. United States*, 167 U. S., 512, where one railroad, in order to get the shipper's business from another railroad, allowed the shipper the price of the cartage which it cost him to remove his goods from the railroad station to his warehouse. His warehouse was on a siding of another railroad, and the railroad making the rebate apparently had to make it in order to get the business. The case went to the United States Supreme Court, and Mr. Justice Brewer, in the course of the opinion, said:

"Whatever the Baltimore and Ohio Company might lawfully do to draw business from a competing line, whatever inducements it might offer to the cus-

tomers of that competing line to induce them to change their carrier, is not a question involved in this case. The wrong prohibited by the section is a discrimination between shippers. It was designed to compel every carrier to give equal rights to all shippers over its own road and to forbid it BY ANY DEVICE to enforce higher charges against one than another. Counsel insist that the purpose of the section was not to prohibit a carrier from rendering more service to one shipper than to another for the same charge, but only that for the same service the charge should be equal, and that the effect of this arrangement was simply the rendering to Mr. Bruening of a little greater service for the 15 cents than it did to Mr. Wolf. They say that the section contains no prohibition of extra service or extra privileges to one shipper over that rendered to another. They ask whether if one shipper has a siding connection with the road of a carrier it cannot run the cars containing such shipper's freight onto that siding and thus to his warehouse at the same rate that it runs cars to its own depot, and there delivers goods to other shippers who are not so fortunate in the matter of sidings. But the service performed in transporting from Cincinnati to the depot at Pittsburgh was precisely alike for each. The one shipper paid 15 cents a hundred; the other, in fact, but $11\frac{1}{2}$ cents. It is true he formerly paid 15 cents, but he received a rebate of $3\frac{1}{2}$ cents. AND REGARD MUST ALWAYS BE HAD TO THE SUBSTANCE, AND NOT TO THE FORM. Indeed, the section itself forbids the carrier 'directly or indirectly by any special rate, rebate, drawback, or other device' to charge, demand, collect, or receive from any person or persons a greater or less compensation, etc. And Section 6 of the Act, as amended in 1889, throws light upon the intent of the statute, for it requires the common carrier in publishing schedules to 'state separately the terminal

charges, and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates and fares and charges.' It was the purpose of the section to enforce equality between shippers, and it prohibits any rebate or other device by which two shippers, shipping over the same line, the same distance, under the same circumstances of carriage, are compelled to pay different prices therefor."

This case decides that where a shipment, among shippers similarly situated, is made from one given point to another, the railroad cannot, by any device, directly or indirectly, charge one more than another. The Court says that is what the Act prohibits, and in this plain state of facts when the railroad suggests the laterals (which are plant adjuncts and used for the more economic administration of the mines) as a justification for the allowance, it does not require the administrative hand of the Commission to pronounce it a rebate. The Act itself has done it, because it is apparent that it is a mere device to justify favoritism among shippers competing in the same markets and operating in the same district. If the argument of the defendant in error is sound, a set of facts such as existed in the Wight case would require the administrative hand of the Commission to first determine whether the allowance there was a rebate, for bear in mind the decision in the Wight case was predicated, not upon the mere departure from the tariffs by the railroad, but upon the fact that the allowance was a rebate.

It is therefore to be observed:

Section 9 has been limited by judicial interpretation.

Section 22, which provides:

"And nothing in this Act contained shall in any

wise abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies."

has also suffered a partial limitation. We are all bound by Acts of Congress as they are judicially interpreted, and compelled to agree that the Acts of Congress mean what the Courts say they mean, and we acquiesce in the limitations placed upon these actions by the ruling of the Courts along the lines of the Abilene Oil case, the Robinson case and the Pitcairn case, which have been discussed above; but when it comes to taking another step such as that advocated by defendant in error and inflicting upon injured shippers what would be equivalent to a repeal of these sections of the Interstate Commerce Act, we submit that this cannot be done, if the fundamental principles of law are to be adhered to.

Up to the present time it has been determined, first, by the Abilene Oil case and the Robinson case, that an injured shipper must go to the Interstate Commerce Commission if he wishes to correct a published rate, and this whether his allegation is that the rate is either unreasonable or unjustly discriminatory; the Abilene Oil case announcing the doctrine as to the unreasonableness, and the Robinson case as to the discriminatory feature of the published rate; and, second, by the Pitcairn and Morrisdale cases, that where a general rule of the railroad for car distribution is objected to on the ground that undue preferences are given to some and by the same token that others are injured, resort must be had to the Interstate Commerce Commission to primarily investigate and decide whether the rule is or is not unjustly discriminatory; but this is as far as the Courts have gone, because in both branches, that is in the questions arising from published rates and the questions arising from the alleged unjust rules for car distribution, the Courts have always said in the opinions that, wherever the rights are plain and independent of a previous administrative action of the Commission, resort could be had to the Courts in the first instance. This is substantially

the quoted language from the United States Supreme Court in the Pitcairn case; and in the Abilene Oil case the same exception is made, that where the rights can be redressed without resulting in the destruction of the uniformity of the Act as a whole, then resort can be had to the Courts in the first instance, under Section 9. The Courts have nowhere said that Section 9 is repealed, and there is still virtue in Section 9 to redress any acts or wrongs that do not flow from the published schedule of rates or from a general rule or practice covering the distribution of cars, or other matters connected with the operation and maintenance of a railroad company. The whole purpose of the United States Supreme Court has been to prevent varying and conflicting decisions upon the same question, and they have said that they cannot permit "a divergence between the action of the Commission and the decision of a Court;" and again, they have said that they could not permit "the ESTABLISHED SCHEDULE to be found reasonable by the Commission in the first instance, and unreasonable by a Court acting originally," and thus present a conflict in the enforcement of the Act, and these are the reasons that the United States Supreme Court in the Abilene Oil case and in the Robinson case refused to allow the injured shipper to seek redress in the Courts in the first instance, against the unreasonable or the unjust discriminatory character of a rate as published and filed. In other words, the published rate must be taken as the legal rate until that is changed either by the railroad or by appropriate action of the Commission, but this certainly does not mean to cover the case where the matter never goes before the Commission, because the secret refunds or rebates are never published or filed or intended to be known by the Commission or by shippers other than the few scattered and favored ones. The Interstate Commerce Act itself, without any previous action by the Commission, fixes the right of an injured shipper to recover the difference between what he has paid and what the favored shipper has paid when the injured shipper has paid the rate as published and filed. This is apparent from the debates on the bill. See

Debates in 49th Congress, First Session, pages 5, 451 and 556, compiled by U. H. Painter, and also Painter's Debates of the 49th Congress, Second Session, page 3. It will appear from the debates that when the bill was originally passed by the Senate there was added to what is already in Section 2 of the bill, the following:

"And any common carrier who shall violate the provisions of this section as aforesaid shall be liable to all persons who have been charged a higher rate than was charged any other person or persons for the difference between such higher rate and the lowest rate charged upon like shipments during the same period; or if such lower rate was made on any time contract or understanding, the said common carrier shall be liable to pay a like rebate or drawback to all other shippers over the same route between the same points who have shipped goods during the time that such contract or understanding was in operation."

This last quoted language was finally stricken out because the House objected that it was not an ample recompense to the shipper, on the ground that the railroads were rich and could wear out a shipper by long delay, and moreover that the difference might not be enough for any one shipper to go to the expense and trouble of starting the machinery of the law in operation, in order to recover only the exact difference between the highest rate charged and the lowest rate charged, and after conference between the representatives of the Senate and the House of Representatives the above-quoted language was taken out and all embodied in Section 8, together with the addition that a reasonable counsel fee should be allowed by the Court in case of recovery—this last helping to meet the objection of the House that the remedy to the injured shipper was not sufficient, by reason of the original language attached to Section 2 of the bill, and that it was the thought of the legislative bodies that they had then and

there, by Section 8, determined that the injured shipper should receive the difference between the highest and lowest bid; and that all that an injured shipper had to do would be to go into Court and recover the amount, is apparent from the language of Senator Cullom, page 3, Painter's Debates of the 49th Congress, Second Session, when he was reporting to the Senate on behalf of the Conference Committee:

"Mr. Cullom: Before action on my motion I desire to make a statement of the changes in the bill. The following is a statement of the changes in the bill as passed by the Senate which have been agreed to and are recommended by the Committee of Conference.

"Sections 2, 3 and 4 of the Senate bill, prohibiting discriminations, contained provisions in relation to the recovery of damages. These have been stricken out of said sections, and have been grouped together in one section, which is made Section 8 of the committee bill. Except as to this rearrangement, substantially the only change made has been the addition of the provision of the House bill that 'a reasonable counsel or attorney's fee' shall be allowed by the Court in every case of the recovery of damages. The parts of said sections which are stricken out in consequence of the rearrangement referred to are all of Section 2 after the word 'unlawful,' in line 13, all of Section 3 after the word 'business,' in line 18, and lines 23 to 27, both inclusive, in Section 4. No other change is made in Section 2."

It will thus be seen that the legislative bodies at least thought they were then and there determining that it was unlawful for a railroad to make a difference in the amount of rates to be paid by shippers under similar circumstances and conditions, and that the injured shipper then and there became entitled to recover the difference between the highest and the lowest rate paid, and they thought that when Section 8

provided that the injured person or persons should recover "the full amount of damages sustained in consequence of any such violation, together with a reasonable counsel fee," that the measure of damage was what had been provided in the first instance in Section 2, to wit, the difference between the highest rate and the lowest rate charged upon like shipments during the same period. So that the legislative bodies of the land thought that they were giving to an injured shipper a right of action about which there would be no further difficulty, except to prove that the railroad did carry commodities cheaper for one than for the other, and that he could resort under Section 9 to a suit at law to recover it; and there would be no varying opinions or conflicting decisions as to this, because it was settled law that the railroad had no right to charge anything but the rate as filed with the Interstate Commerce Commission. That was the only legal rate that the railroad could charge, and if there were any allowances or charges that the railroad thought it should be permitted to make there was provision under Section 6 that these should be mentioned on the tariff, and if they were not mentioned they had no legal existence, so far as interfering with the rights of an injured shipper to recover his damages was concerned.

Then Section 15 was amended in 1906 to provide a way by which a shipper could raise the question as to whether terminal charges and other allowances by the railroad to a shipper were fair and reasonable. Prior to this there was no method by which this matter could be separately examined and decided. But of course there could be no investigation and decision under Section 15, if the railroad concealed the fact that allowances were made, by not printing and filing them as provided for in Section 6.

The defendant in error has constantly said in the argument in the lower Court:

"If they were and are rebates then they could not be made legal payments by printing them upon the

tariff schedules. If they are not rebates and were legal payments for services rendered their character could not be changed by reason of the omission from the schedule."

This argument is entirely aside from the question. We do not say that the placing of the allowances upon the schedule would make them legal or illegal, except that they would be treated as legal until somebody objected to them, and then, if the Interstate Commerce Commission, after investigation, determined that they were unjustly discriminatory they would be cast aside. What we do say is that the railroad could not change the published rates by making allowances, unless the allowances were noted under Section 6, and if they were noted under Section 6, then, since 1906, the Interstate Commerce Commission would hear and determine any and all objections to them. The placing or not placing them upon the published schedule is not a question as to whether they are made legal or illegal, but determines the course of action of an injured shipper, since at least 1906. The placing or not placing them upon the schedule determined the forum in which the redress could be sought by the injured shipper. If they were not noted as provided for under Section 6, then the right of the injured shipper to go into the United States Court, under Section 9, was not interfered with. If they were noted as provided for in Section 6, then the injured shipper would have to go to the Interstate Commerce Commission, as provided for under Section 15. And in connection with this discussion it may be stated that we are taking the strongest view against us, because the period of this action ended in May, 1901, and Section 15 was not passed until 1906, and it might be a question whether we could not have raised the question of the reasonableness of the allowance in Court, even if the allowances had been noted under Section 6, prior to 1906; but we are willing to assume, for the purpose of this argument, that we might have had to go to the Interstate Commerce Commission if the allowances had been so noted.

But coming back to the question as to whether the Act itself determined that the injured shipper in this case had a right of action without recourse to the Interstate Commerce Commission, we beg leave to refer to the case of *Union Pacific Railroad vs. Goodbridge*, 149 U. S., 680, where the United States Supreme Court construed a Colorado statute, the language of the Colorado statute being substantially the same as the Interstate Commerce Act. In the course of the opinion of the Court, Justice Brown said:

"Plaintiffs' evidence had shown that the Marshall Company had been receiving a rebate upon all coal transported by it to Denver, which was not allowed to its competitors in business, and the damages sustained by the plaintiffs were measured by the amount of said rebate which should have been allowed to them."

So that the judicial mind is the same as the legislative mind on this point, to wit, that it requires no further action on the part of an injured shipper to have determined whether he is entitled to recover the amount of the rebate that a railroad makes to a favored shipper. The law itself, at the moment the rebate is made, determines that fact, and it does not require the intervention of the Interstate Commerce Commission as a primary requisite to the shipper bringing his suit in the United States Courts. There can be no divergence of opinion or conflicting views on this matter. The law has said that it is wrong, and the fair reading of Section 8 is that the law has said to the injured shipper: You can recover the difference between the highest and the lowest rate charged for the carrying of goods, providing you are in a substantially similar condition with the favored shipper who has been charged a less price. This is altogether different from the question that arises when a published rate is filed, because the law there says that is a legal and a just rate until upset by the Commission, and until you have that finding you have no cause of action. But in this case the excess between the low-

est rate paid and the highest rate paid is illegal and prohibited by law, and at the time it is done the injured shipper is entitled to his recovery there and then. To make this position clear we will restate it. The published rate is the only legal rate. A departure from it is a rebate which the railroad is not permitted to make, and which if it does make gives the injured shipper a right to recover a certain and definitive amount of damages, to wit, the difference between the highest rate paid and the lowest rate paid. If the railroad wishes to have protection for making a different charge to one shipper as against another, then it must file with the Interstate Commerce Commission, under Section 6, the said allowances; and then since 1906, under Section 15 (which was amended at that time by the Hepburn Act) the Interstate Commerce Commission has authority to hear and determine whether these allowances are fair and just. But a railroad cannot rely on Section 15 if it has suppressed from the Commission and from shippers the fact that it is making any allowances at all, by refraining from publishing them in accordance with the provisions of Section 6 of the Act. The position of the railroad in this case is a bold and most amazing one. It says, true we gave rebates; true we did not file the fact of giving rebates according to law; but we will use this violation of the law in a single instance or two to drive you out of Court by alleging that this affected everybody who shipped along our lines, because they didn't get from us what they should have gotten. We treated a few shippers as favored ones and gave them this advantage; but you must go to the Interstate Commerce Commission to have the fact as to whether this rebate is right or wrong determined—and all this when the plain purport of the Act is that it is determined ipso facto by the law, the moment the rebate is given, that the railroad must make good to the injured shipper. But the railroad says the published rate is the only legal one, and that it would have no right to pay to the injured shipper this amount of money without rendering itself liable to criminal actions for departing from the published rate. This suggestion is aside from the question, and

would equally apply when the Commission ordered reparation after an investigation and decision. The law states that one shipper is to receive as good rates as another, and when the favored shipper receives a less rate, then every other shipper in like condition is entitled to the same rate as the favored shipper, and entitled to recover the difference, and the railroad could very well pay to all the shippers the difference between what it charged them and the favored shipper, and it would be relieved of its civil responsibility as provided for in Sections 2, 8 and 9 of the Act. Of course the proper practice for the railroad would be to correct the published schedule of rates in accordance with the facts as it administered the rates, and then make recompense to the injured shipper for the discrimination that had been made theretofore; and all of this has nothing to do with the criminal responsibility of the carrier for violations of either the Interstate Commerce Act or the Elkins Act concerning departures from the published tariff rate. If all shippers were treated alike there would be no civil responsibility on the railroad, whether the actual rates were less than the published rates or not; but whether it would relieve it of criminal responsibility is another question, and is to be determined by considerations other than those which the law has provided for the civil recompense to injured shippers. The real hardship in this class of cases is that if the defendant in error is successful on this point the injured shippers are absolutely without any remedy to right their wrongs. Every litigant, as well as members of the legal profession, supposed that Section 9 gave the right to go into Courts, and that the original statute of limitations applying to Federal actions applied to these cases, because there was no special statute of limitations in the Interstate Commerce Act. Now, to stretch the decision in the Abilene Oil case and to tell these shippers that they did wrong in following the words of Section 9, when the statute of limitations, so far as resort to the Interstate Commerce Commission is concerned (which is two years) has expired, would, we submit, be an injustice which no Court will tolerate. If the railroad were successful in this conten-

tion it would be the best possible protection to it from the application of the Interstate Commerce Act. It would save itself hundreds of thousands of dollars in cases where admittedly it had violated the law; for an inspection of the records of the Courts in the Pennsylvania coal districts, and the records of the Interstate Commerce Commission, will show that the litigants always sought the Court's relief, whenever the railroad had ceased altogether to give rebates, or had modified the rebates, on the theory that their rights in this particular were fixed, and recovery would be safer and more assured in the well-known tribunals of the United States Courts than in the newly organized Interstate Commerce Commission. Resort was had to the Interstate Commerce Commission only where the objectionable order still continued, and this more for the purpose of having the conditions remedied than for the collection of damages by way of reparation, although damages could be awarded in connection with the decree ordering the railroad to desist from any and all illegal practices. But, as stated above, the records show that there were five cases started in Court for every one that was started in the Interstate Commerce Commission, when the action was purely for the recovery of damages suffered as a result of the illegal operations of the railroad prior to the time when the action was started, and for the railroad now to escape from its own wrongs, by the Courts holding that Section 9 does not mean what it says, and that Section 9 is substantially repealed in its entirety, is something that "the plain man of the street" and the injured shipper will have great difficulty in comprehending.

The Interstate Commerce Act was passed in response to a long continued evil that had crept into the administration of railroads. Railroads made or unmade shippers. They made some rich; others poor; and entirely ruined others. The Act was passed to insure equality of rates to shippers under similar conditions and circumstances, and the United States Supreme Court in the *Wight* case felt that it must make a rigid ruling against any form of allowance, whether direct or indirect, or by the aid of a device, which resulted in an allowance to one

shipper over another. Of course it was to be expected that the railroads would still endeavor to give the rebates and then find excuses for them afterwards, and that the railroads, when the trial would come, would not be without their seeming justification for the payments that were made, although in this case the railroad has been hard put to, to present anything that would even bear the semblance of being a sensible explanation for these varied and gratuitous secret payments. The shippers, both the unfavored and the favored ones, involved in this case, were shipping substantially the same kind of coal from the same district to the same markets, and were in competition with one another, and it can readily be understood how an unfavored shipper would be compelled to fall by the wayside when this daily handicap was placed upon his efforts, by the railroad secretly aiding the favored shipper; and the railroad, when caught, so to speak, red-handed, comes to Court, not to openly admit its infraction of the law, but to set up a number of flimsy pretexts as to why the payments were made in good faith, and explores the realms of technique in the law to get some defence behind which it hopes to hide and escape from the just imposition of damages in accordance with the law.

As was said in *New York, New Haven and Hartford Railroad Company vs. Interstate Commerce Commission*, 200 U. S., 361:

"It cannot be challenged that the great purpose of the Act to regulate commerce whilst seeking to prevent unjust and unreasonable rates, was to secure equality of rates as to all, and to destroy favoritism, these last being accomplished by requiring the publication of tariffs and prohibiting secret departures from said tariffs, and forbidding rebates, preferences and all forms of undue discrimination. To this extent and for these purposes the statute was remediable and is therefore entitled to receive that interpretation, which reasonably accomplishes the great public purpose, which it was enacted to subserve."

It is submitted that the defendant in error violated the law, and that the plaintiff in error was pursuing the proper practice in resorting to the United States Court for a vindication of its rights resulting from the violation of the Interstate Commerce law by the defendants in error.

(b.) AGREEMENT TO SUBMIT CASE TO REFEREE.

Another ground upon which the judgment of the Court below should be reversed is by reason of the reference filed in this case. While it is perfectly true that jurisdiction cannot, in a great many cases, be conferred by agreement, yet it is also true that a party may be estopped from raising the question of jurisdiction, and, of course, it always has been and always will be true that parties can select a special person or tribunal to determine the differences that exist between them. There is no doubt but that an injured shipper and a railroad company could pick out "John Jones" and submit to him the matters in dispute between them. There is no constitutional provision or statute of any kind that could take away that right, either as applied to the Interstate Commerce Act or any other Act. The plaintiff in error and the defendant in error in this case made a reference to Judge Jenkins, which, if anything, outran the question of jurisdiction as ordinarily applied in this class of cases, when resort has been had to the United States Court. It is true that the reference was filed in the case that was started in the United States Court, but the terms of the reference show that both parties meant to abide by the decision of Judge Jenkins on this question; and no question of jurisdiction or the right of Judge Jenkins to hear and determine the matter in the first instance was raised until after he had decided against the defendant in error. The language of the reference is:

"That all questions of law and fact in this case shall be submitted to Hon. Theodore F. Jenkins, as

Referee, whose duty it shall be to take testimony; to report the same to the Court; to report findings of fact and conclusions of law; also to report whether judgment should be entered for plaintiff or for defendant, and, if judgment should be entered for the plaintiff, in what amount."

Then again, as showing that the parties had in mind the idea of having Judge Jenkins decide the dispute between them, the reference continued:

"The Referee shall have all the powers of a Master in Chancery, and his final report shall have the same force and effect which would attach to a report of a Master in Chancery."

Of course, there could strictly be no Master in Chancery in this action at law, but the powers of a Master in Chancery were selected as the standard by the parties to guide the Referee in his reference. This is suggested to show that the primary intent of both parties was really to submit the matter to an arbitrator, who was called a Referee, and his powers were measured, for convenience, by the powers of a Master in Chancery, and the parties, by submitting the question to Judge Jenkins, meant to get away from any technical question of jurisdiction. The right to file exceptions and the right to appeal, etc., were meant to cover those questions outside of the question of jurisdiction, because the defendant in error voluntarily waived the question of jurisdiction, when it agreed to submit, without question, to Judge Jenkins hearing and determining the questions involved. The defendant in error having made this agreement of reference is not in the position of a party, who, having been brought into Court by adverse proceedings, is compelled to appear for trial before a jury when called there by a plaintiff under ordinary rules of procedure. The defendant in error in the case at bar has taken a voluntary step to express its approval of a tribunal hearing a cause, and

having agreed to refer every question of law and fact to a selected arbiter, the defendant in error cannot afterwards question the jurisdiction of said arbiter to the detriment of the other party.

Surely a defendant cannot successfully come in with a motion to dismiss for want of jurisdiction, not only after pleading and taking its chances of winning on the merits, but above all, after expressly agreeing to submit the matter to a Referee, and then, when the Referee has filed his report, raise the question of jurisdiction. If the contention of the defendant in error is correct, it has deprived the plaintiff in error of a hearing of the case, as the statute of limitations has run against the plaintiff in error. The statute of limitations was running and concluding the plaintiff in error while the defendant in error was apparently not only submitting itself to the jurisdiction of the Circuit Court, but was appointing a Referee to hear and decide the case.

It should be borne in mind, in considering the question of the reference, that suit had been begun in the Circuit Court and a cause of action had been stated as existing in favor of the plaintiff in error, to which the defendant in error had replied without raising any question of jurisdiction, or suggesting any phase of the case that required submission to the Interstate Commerce Commission, and that there was a meritorious question in dispute to be determined, and with full knowledge of this fact defendant in error agreed to the submission of the questions involved in that issue, as then presented by the pleading in the case, and thereby waived the submission of any question to the Interstate Commerce Commission. The defendant in error then and there agreed to try the question of the injury done to the plaintiff in error as a shipper over the road of the defendant in error, before the Referee selected by the parties. This reference, if it meant anything, meant a waiver by the defendant in error of any objection to the suit on the ground that the subject matter had not been theretofore referred to the Interstate Commerce Commission. The question of the reference to the Interstate Com-

merce Commission is one that could be waived by the defendant in error, and especially so where the injury is of an individual character and peculiar to the plaintiff in error as a shipper. Under the Act of Congress the Circuit Court unquestionably had jurisdiction to determine the issue raised by the pleadings. The contention of the defendant in error only raises the question whether or not this jurisdiction should be postponed until action should be had by the Interstate Commerce Commission. This is not a question of absence of jurisdiction, but rather of the time at which the jurisdiction could be exercised. The agreement of the defendant in error does not present the case of an attempt to confer jurisdiction, but merely a waiver on its part of the requirement that any prior action should be had by the Interstate Commerce Commission. Surely this was within the power of the defendant in error, and having exercised that power it should be held to its full legal consequences, especially in view of the fact that if its contention in this case were allowed to prevail it would mean the disastrous result of turning the plaintiff in error out of Court without remedy.

It is submitted for the reasons above stated, that the judgment of the Circuit Court should be reversed and the record remitted for further proceedings, in accordance with law.

Respectfully submitted,

GEORGE S. GRAHAM,
Attorney for Plaintiff in Error.

"EXHIBIT A."

IN THE UNITED STATES CIRCUIT COURT OF AP-
PEALS FOR THE THIRD CIRCUIT.

OCTOBER TERM, 1911. No. 35.

MITCHELL COAL AND COKE COMPANY,
Plaintiff in Error,

vs.

PENNSYLVANIA RAILROAD COMPANY,
Defendant in Error..

IN ERROR TO THE CIRCUIT COURT OF THE
UNITED STATES FOR THE EASTERN
DISTRICT OF PENNSYLVANIA.

Before GRAY, BUFFINGTON and LANNING, Circuit
Judes.

GRAY, Circuit Judge:

This was an action in the Court below, brought by the Mitchell Coal and Coke Company against the Pennsylvania Railroad Company, the appellee, to recover damages for violation of the provisions of the Interstate Commerce Act, in that a special rebate was allowed to certain of plaintiff's competitors in their shipments of coal and coke over defendant's road, which special rebate was not allowed to the plaintiff in its shipments of coal and coke, made over the lines of defendant to some interstate markets under similar circumstances and conditions. After being upon the trial list at several terms of Court, the parties, by their respective counsel, made an agreement for a reference of the case, wherein it was provided that all questions of law and fact should be submitted

to the Referee, who was to take testimony and report the same to the Court with findings of fact and conclusions of law, and whether judgment should be entered for plaintiff or defendant, and if for the plaintiff, in what amount. It was provided that the Referee should have all the powers of a Master in Chancery, and that his final report should have the same force and effect which would attach to the report of a Master in Chancery. Each party reserved the right of exception and appeal. Upon the report of the Referee, exceptions were filed and were argued, some of which were passed upon by the Court; but the Court stated that, inasmuch as on certain points further findings of fact would be required, a re-reference for that purpose would be ordered, unless the parties agreed as to what such facts were.

In one of its exceptions, the defendant raised the question of jurisdiction, suggesting that the Interstate Commerce Commission should have been first applied to, and that for the present at least the Circuit Court had no jurisdiction of the suit. With reference to this exception the Court said:

"The recent decision of this Court in *Morrisdale Coal Co. vs. Penna. R. R. Co.*, 176 Fed., 748, is referred to in support of this proposition. That case is now *subjudice* in the Court of Appeals, and obviously, as it seems to me, I should not repeat a ruling which should shortly be declared erroneous. For the immediate purpose, I shall therefore hold formally that the Circuit Court should hold jurisdiction of the pending controversy."

Afterwards, and before any other proceedings were had in the Court below, and after the judgment of this Court in the case of the *Morrisdale Coal Co. vs. Pennsylvania Railroad Co.*, 106 C. C. A., 269, had been announced, the defendant filed a motion to dismiss the suit, for want of jurisdiction in the Circuit Court, on the ground that the character of the suit was such that, under the Interstate Commerce Act, appli-

cation should have first been made to the Interstate Commerce Commission, and that there was no jurisdiction in the Circuit Court under the act touching the subject matter of the suit until after such application had been made. This motion was granted by the Court below and the case dismissed for want of jurisdiction, for the reasons stated. To this judgment, the writ of error has been sued out from this Court. Though the record brought up by this writ is somewhat voluminous, containing all the evidence, documentary and otherwise, produced on either side during the protracted proceedings in the Court below, the final judgment is one for the dismissal of the suit for want of jurisdiction. It is, therefore, a question of jurisdiction alone that is presented to this court by the writ of error, unaccompanied by any question as to the merits, as no judgment on the merits was ever reached in the Court below.

The inquiry at once presents itself, whether this Court has appellate jurisdiction in the premises?

The appellate jurisdiction of this Court is set forth and defined in the sixth section of the Act of March 3, 1891, establishing the Circuit Courts of Appeals, as follows:

"Sec. 6. That the Circuit Courts of Appeals established by this act shall exercise appellate jurisdiction to review by appeal or by writ of error final decision (s) in the District Court (s) and the existing Circuit Courts in all cases other than those provided for in the preceding section of this act, unless otherwise provided by law, and the judgments or decrees of the Circuit Courts of Appeals shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy, being aliens and citizens of the United States or citizens of different States; also in all cases arising under the patent laws, under the revenue laws and under the criminal laws and in admiralty cases."

To ascertain this residuum of appellate jurisdiction conferred upon the Courts of Appeals, we turn to the "preceding section" (Sec. 5), which defines the appellate jurisdiction of the Supreme Court, as follows:

"Sec. 5. That appeals or writs of error may be taken from the District Courts or from the existing Circuit Courts direct to the Supreme Court in the following cases:

"(1) In any case in which the jurisdiction of the Court is in issue; in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the Court below for decision.

"(2) From the final sentences and decrees in prize causes.

"(3) In cases of conviction of a capital or otherwise infamous crime.

"(4) In any case that involves the construction or application of the Constitution of the United States.

"(5) In any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority, is drawn in question.

"(6) In any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States."

It is clear, therefore, that this Court is excluded from appellate jurisdiction in all cases in which appellate jurisdiction is conferred by this section on the Supreme Court. If, then, the present case is one in which the jurisdiction of the

Court below is in issue, in the sense in which the language above quoted must be taken, and that question alone is presented, unembarrassed by any judgment or decision on the merits, appellate jurisdiction is denied to this Court by Section 6 of the Court of Appeals Act.

Some of the earlier decisions of the Circuit Court of Appeals have given a very broad construction to this language—so broad as to include every issue of jurisdiction in a lower Court without regard to the grounds upon which it was raised. But the Supreme Court has, in several cases, construed the language of paragraph (1) of Section 5, above quoted, to include only cases where the question is as to the jurisdiction of Courts of the United States, as such, and that question alone must be certified. In *Schweer vs. Brown*, 195 U. S., 171, it was decided by the Supreme Court that, where a District Court, in bankruptcy, asserted jurisdiction in a summary proceeding, to require the payment to the trustee in bankruptcy of a sum of money, as part of the bankrupt's estate, jurisdiction being denied on the ground that it was an adverse claim to money which could only be tried in a plenary suit, the issue of jurisdiction raised was not of the Court, as a Federal Court, and the appellate jurisdiction belonged to the Circuit Court of Appeals. So, too, in *Shipbuilding Co. vs. Hagg*, 219 U. S., 175, the Supreme Court said:

"This Court has had frequent occasion to determine what is meant in the statute providing for review of cases in which the jurisdiction of the Court is in issue, and it has been held that the statute means to give a review, not of the jurisdiction of the Court upon general grounds of law or procedure, but of the jurisdiction of the Court as a Federal Court."

And decided that where jurisdiction by diversity of citizenship exists, the question of whether the Circuit Court has jurisdiction to enforce the decree of another sovereignty is a question of general law, and not a question peculiar to the

jurisdiction of the Federal Court, as such, and a direct appeal will not lie to the Supreme Court from the judgment of the Circuit Court.

In *Louisville Trust Co. vs. Knott*, 191 U. S., 225, the Supreme Court said:

"The question of jurisdiction which the statute permits to be certified to this Court directly, must be one involving the jurisdiction of the Circuit Court, as a Federal Court, and not simply its general authority as a judicial tribunal to proceed in harmony with established rules of practice governing Courts of concurrent jurisdiction as between each other."

Section 5 of the act being thus construed, it follows that there may be questions of jurisdiction or *quasi* jurisdiction, that do not affect a Federal Court as such. On the other hand, the Supreme Court has more than once sustained its own appellate jurisdiction, as in a case where a District Court, sitting as a Court of Admiralty, decided that it had no jurisdiction because the matter of the controversy between the parties was not a subject of admiralty jurisdiction. (*THE IRA M. HUGHES*, 218 U. S., 264; *Steamship JEFFERSON*, 215 U. S., 130.)

But we need only refer to the recent case of *Morrisdale Coal Company vs. Pennsylvania Railroad Company* (*supra*) for an elucidation of the principles, as recognized by this Court, that must govern the question of distribution of appellate jurisdiction between the Supreme Court and the Circuit Courts of Appeals under said Sections 5 and 6 of the Act of 1891. The Court below had dismissed the case for want of jurisdiction (after a special verdict had been found in favor of the plaintiff), on the precise grounds upon which the present case was dismissed by the Court below; but the writ of error in the former case brought to this Court not only the question of jurisdiction, but also the merits of the case, the

assignments of error covering both grounds. On this account the Court entertained jurisdiction of the writ of error, and prepared to decide the case in an opinion on the merits. Before this opinion was filed, the defendant in error presented a petition in this Court for the dismissal of the writ of error, on the ground that, under the provisions of Sections 5 and 6 of the Act Establishing Courts of Appeals, this Court had no appellate jurisdiction of the case. The Court thereupon filed a supplemental opinion, dealing with this petition, and denied the motion to dismiss, on the ground that the writ of error had brought up both the question on the merits and that of jurisdiction, and that therefore the Court had appellate jurisdiction of the whole case. On the general question of appellate jurisdiction, the Court, speaking through Judge Lanning, laid down the following as the first rule to be deduced from adjudicated cases:

"If a case in a District or Circuit Court is dismissed by final judgment or decree, either for want of jurisdiction of the parties or for want of power as a Federal Court to take jurisdiction of the subject matter, without the decision of any other question, so that the only question presented by the record is such question of jurisdiction, the judgment or decree can be reviewed by the Supreme Court only, on appeal or writ of error, with a certificate from the lower Court of the question of jurisdiction."

The jurisdiction in the present case was challenged in the Court below, on the ground that the question, whether the practice of the defendant, in making the payments and rebates complained of, was or was not obnoxious to the provisions of the Interstate Commerce Act, was one which, having regard to the principles heretofore determined by the Court below, as well as by this Circuit Court of Appeals and by the Supreme Court of the United States, should be determined primarily by the Interstate Commerce Commission, and that

therefore the Court below was without jurisdiction to pass upon and determine the issues involved.

It is not necessary to consider the argument, to the effect that the Supreme Court has in a certain class of cases, in which the present case, it is contended, must be included, decided that a primary appeal to the Interstate Commerce Commission is obligatory, and that there is no option in such cases given to the complainant to institute an action for damages in the Circuit Court. Whether counsel is correct, or not, in this contention, is not a matter with which we are now concerned. We are not considering whether there is error in the dismissal of the case by the Court below, for want of jurisdiction in it, but whether there is appellate jurisdiction in this Court, and therefore whether the question of jurisdiction raised in the Court below was one involving the jurisdiction of that Court, as a Federal Court, and not simply its general authority as a judicial tribunal.

On this question, it seems to us clear that the jurisdiction to entertain the suit of a plaintiff who complains of violations of the Interstate Commerce Act, and seeks to recover damages therefor, has been conferred upon the Circuit Court, as Federal Courts. The jurisdiction of the Circuit Court is conferred by the Interstate Commerce Act, and the question, whether in the present case the plaintiff, under the provisions of the statute, as interpreted by the Supreme Court, was not required primarily to apply for investigation and redress to the Interstate Commerce Commission, is one that affects the Court's jurisdiction as a Federal Court. It seems to us that there is no difference in the principle underlying such a case and a case where a Court of Admiralty declines jurisdiction of a libel in a cause which, in its opinion, is not of a maritime nature and subject to admiralty jurisdiction. The fundamental and substantial jurisdiction with which the Court is invested by law, is challenged, as it was in the case of "The Ira M. Hughes" (*supra*), as not extending to the subject matter in question. All Federal Courts are Courts of limited jurisdiction, and the question of the extent of their jurisdiction

must be decided by the limitation placed upon it by law. Such a question necessarily affects a Federal Court as such.

The motion, therefore, to dismiss the writ of error in the present case, for want of appellate jurisdiction in this Court, must be granted, and it is so ordered.

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IN THE
Supreme Court of the United States.

October Term, 1912. No. 674.

Mitchell Coal and Coke Company, Plaintiff in Error,

vs.

The Pennsylvania Railroad Company, Defendant in Error.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF ON BEHALF OF DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

The basis of the plaintiff's claim is an alleged violation by the defendant of Section 2 of the Interstate Commerce Act, this violation resulting from the carriage by the defendant of shipments of the plaintiff on which it was claimed a higher freight charge was exacted than was charged or exacted on shipments of other shippers in the carriage of which the plaintiff asserted a like service had been rendered by the defendant.

No attempt was made by the plaintiff to show that it had sustained any injury or damage as the result of the lower charges of which it complained; its claim was rested entirely upon the proposition that, being entitled to as low freight rates as the other shippers, and having been required to pay higher rates, it could recover the difference in the amount of the two charges.

The plaintiff's allegation was that the lower charges of which it complained had been brought about by the payment of unlawful freight rebates. During the earlier period of the action the plaintiff itself had received rebates on about seventy per cent. of its shipments, the remaining thirty per cent. being carried at tariff rates. During the latter portion of the period the tariff rates were paid by the plaintiff on practically all of its shipments.

During the earlier period, therefore, the plaintiff's claim was rested upon the proposition that it had a right to recover the difference between the amount of the rebates paid to it and those which it was claimed were paid to other shippers, and during the latter part of the period its claim extended to the full amount of the rebates which it claimed had been paid to others.

The facts relating to the payments which the plaintiff alleged were rebates were these:—

The plaintiff, during the period of the action had been a shipper of coal and coke over the defendant's railroad. The shippers who, it was claimed by the plaintiff, had received the payments in question were five in number, viz: the Latrobe Coal Company, the Bolivar Coal and Coke Company, the Altoona Coal and Coke Company, the Glen White Coal and Lumber Company, and the Millwood Coal and Coke Company.

The cause of action asserted by the plaintiff because of these payments was thus indicated in its declaration or statement of claim:—

“The defendant company, by reason of the aforesaid rebate of ten cents per ton allowed to the said Latrobe

Coal and Coke Company on all coal and coke shipped by said colliery as aforesaid, and to the said Bolivar Coal and Coke Company on all coke shipped by said colliery as aforesaid, charged, demanded, collected, and received from the plaintiff a greater compensation than it has charged, demanded, collected or received from the last mentioned colliery companies for rendering substantially the same services as rendered to the plaintiff."

* * * * *

"The defendant Company has by reason of the aforesaid rebate of fifteen cents per ton allowed to the said Altoona Coal and Coke Company, Glen-White Coal and Lumber Company, and Millwood Coal Company, charged, demanded, collected, and received from the plaintiff a greater compensation than it has charged, demanded, collected, or received from the last mentioned colliery companies for rendering substantially the same service as rendered to the plaintiff."

It appeared from the evidence that the defendant had divided the bituminous coal and coke territory tributary to its line into several groups or regions, and had established and put in force to many destinations similar or group rates of freight from all mines located in the respective regions. The plaintiff's mines were all located in what was known or designated as the "Clearfield Region," which was the easternmost of the regions. The region just west of the Clearfield region was known as the "Latrobe Region," and the mines of the Latrobe Coal Company and the Bolivar Coal and Coke Company were located in this Latrobe region.

The freight rates on coke to eastern points (and the plaintiff's shipments embraced in the present action were all made to eastern points) were, throughout the period of the action twenty cents per ton higher to similar destinations from the mines and ovens in the Latrobe region than from those in the Clearfield region.

The Bolivar Coal and Coke Company was the easternmost operation in the Latrobe region. It shipped practically no coal, but was a shipper of coke. Its coke ovens and mines were located but a few miles west of the westernmost operation in the Clearfield region, and as the coal from which its coke was made was very, if not entirely, similar, to that mined in the Clearfield region, its coke did not command a higher price than that produced by the ovens in the Clearfield region. Under these circumstances, it was unable to meet the competition of the shippers of coke in the Clearfield region, who had an advantage of twenty cents a ton in the freight rate, and with the view of partially, at least, relieving it from this disadvantage, the defendant, without making any open reduction in its tariff rates, made an actual reduction to the Bolivar Company of fifteen cents per ton. This still left the rate of the Bolivar Company five cents a ton higher than the rates from the Clearfield region, and consequently five cents a ton higher to the same destinations than the plaintiff's rates.

This higher tariff and actual charge on the Bolivar Company's shipments was continued throughout the period of the action, notwithstanding the fact that before the close of the period the Latrobe and Clearfield regions had been grouped for rate-making purposes, so far as the coal rates were concerned, and the higher rate on coal previously existing from the Latrobe region had been brought down to the Clearfield rate.

The operations of the Latrobe Coal Company were also in the Latrobe region, but were west of those of the Bolivar Company. It was a shipper of both coal and coke, and throughout the period of the action the defendant had paid to it ten cents a ton on both coal and coke shipments transported from its mines. Even upon the assumption that these payments would have to be treated as freight allowances or rebates, the rates paid by the Latrobe Company throughout the period of the action on its coke shipments and for the greater portion of the period on its coal shipments were ten and five cents, respectively, higher than

those paid by the plaintiff on its shipments, due to the fact that the tariff rates on coke from the Latrobe region were at all times twenty cents higher, and on coal fifteen cents per ton higher, until towards the close of the period of the action, than the tariff rates from the Clearfield region.

The payment to the Latrobe Company had been originally authorized in 1890 by the then General Freight Agent of the defendant. The payment, as appeared from the letter authorizing it, was intended as compensation for the use of certain tracks belonging to the Latrobe Company. It also appeared in the evidence that for a portion of the time the Latrobe Company had had in service on the sidings or spurs connecting its mines with the railroad a locomotive which at times performed services in relief of the defendant in moving loaded and empty cars to and from the mines.

The operations of the Altoona Coal & Coke Company and of the Glen White Coal and Lumber Company, these being two of the remaining three shippers who had received payments which the plaintiff alleged must be treated as freight rebates, were located in the same region in which the plaintiff's operations were located, while the operations of the Millwood Coal and Coke Company were located in the Latrobe region.

The circumstances connected with the payments to these three companies, were as follows:—

All of the mines on the line of the defendant's road were connected by sidings, spurs or branches of varying length. As to the character of those which connected the plaintiff's mines with the defendant's road, the Referee in the present case found as follows:—

"The various operations of the plaintiff were located on short spurs or sidings, none of which offered any difficulties in the way of operation, due to length, grades, curvature, or other conditions,"

The character of the branches—for they were such—which connected the mines of the Altoona Coal and Coke Company, the Glen White Coal and Lumber Company

and the Millwood Coal and Coke Company with the defendant's railroad was thus described in the Referee's report:—

“The mines of the Altoona Coal and Coke Company and of the Glen White Coal and Lumber Company were not located immediately upon the defendant's railroad, but were located on short branches belonging to these companies, respectively, both of which connected with the railroad of the defendant at a point west of Altoona, known as Kittanning Point.

“The branch on which the mines and ovens of the Altoona Coal and Coke Company were located was between four and five miles long, having a maximum gradient of about four per cent., and the branch on which the Glen White Coal and Lumber Company's operations were located was about three miles long with a maximum gradient of about three per cent. The operations of the Altoona Coal and Coke Company were located at a point about eight hundred feet higher than the point of junction of the branch with the defendant's railroad, and the average grade, therefore, of the branch was between one hundred and sixty and two hundred feet to the mile.

“To enable the altitude to be the more readily overcome the operation of the branch was conducted by and through a series of back switches, three in number.

“Due to the lesser altitude which had to be overcome on the branch leading to the operations of the Glen White Coal and Lumber Company, no back switches were used on that branch, but the grades were heavy.

“On both branches the curvature was very sharp.

“The grade and curvature on these branches operated to materially control and restrict the number of cars that could be moved with safety at one time over the same. Dependent upon the weather condi-

tions the number that could be safely moved varied from four to six, and the time consumed in the movement, because of such grades and curvature, of each draft of cars was about four times as great as would have been consumed in the movement of the same number of cars the same distance over a comparatively level line.

* * * * *

"The mines of the Millwood Coal and Coke Company were located on a narrow gauge railroad about two and one-half miles long. * * *"

The defendant's method of delivering empty cars at the various mining operations on its road and of moving the loaded cars therefrom was to stop its trains at the junction of the mine sidings or spurs, and the empty cars were placed at the mines and the loaded cars were moved therefrom and attached to the trains thus stopped at the junctions by the engines and crews of these trains.

Due to the difficulties inherent in the operation of the branches leading to the Altoona Coal and Coke and the Glen White Coal and Lumber Companies' mines, this method of operation was not practicable, because of the time that would have been consumed in performing the service over these branches and the consequent detention of the defendant's trains, and as the Millwood Coal and Coke Company's branch was a narrow gauge one, the defendant's engines, of course, could not operate over it.

The rates of freight on coal and coke which the defendant had in force throughout the period of the action applied in all cases from the mines or ovens. The various mines and ovens, were not specifically shown on the tariffs; in all cases the initial point designated was the station on the railroad nearest to them, except in the case of the three companies referred to, the defendants performed all the service incident to the movement or transportation of the coal and coke from the mines or ovens, and the delivery of the empty cars thereat. It was,

therefore, legally incumbent upon it to perform or to have performed the same transportation service for the Altoona, the Glen White and the Millwood Companies that it performed for other operators on its lines, and as it could not itself perform the service except through the assignment of special engines and crews to the work, it arranged with the operators of these mines that they should perform this service, and the Referee found that throughout the period of the action these companies had actually done so, his findings to this effect being as follows:—

“41. The Altoona Coal and Coke Company had at its said mines from April 1st, 1897, to May 1st, 1901, a locomotive which during said period hauled all the empty cars from the tracks of the Pennsylvania Railroad to the mines and hauled the cars of coal and coke from the mines to the Pennsylvania Railroad tracks. The said locomotive weighed seventy-six net tons.”

“43. The Glen White Coal and Lumber Company had at its said mines from April 1st, 1897, to May 1st, 1901, a locomotive, which during said period hauled the empty cars from the tracks of the Pennsylvania Railroad to the mines and hauled the cars of coal and coke from the mines to the Pennsylvania Railroad tracks.”

“46. The Millwood Coal and Lumber Company had at its said mines from April 1st, 1897, to May 1st, 1901, a narrow-gauge locomotive, which during said period hauled all the empty cars from the tracks of the Pennsylvania Railroad to the mines, and hauled the cars of coal and coke from the mines to the Pennsylvania Railroad tracks. The said locomotive weighed much less than seventy-six tons.”

Payments were made on all the coal and coke transported by these companies over their branches and delivered to the defendant for further carriage, whether the coal and coke

so transported were the property of the companies themselves, in which event the freight rates were payable by them, or the property of purchasers who had bought f. o. b. the mines, and who, consequently, were liable for, and who actually paid, the defendant's freight rates thereon.

The defendant, throughout the period of the action, in conformity with its general practice, performed all the service incident to delivering empty cars at and moving loaded cars from the mines of the plaintiff, excepting at one of the mines known as the Gallitzin mine, after October 1st, 1899. On the date last named the plaintiff directed the defendant to discontinue this service at this mine, this direction being given because the plaintiff desired after that date to perform, and did actually perform, such service with a locomotive which it had secured for this purpose, this action on its part being induced, as its president testified, by a desire to put itself in a position to make a claim upon the defendant for a payment similar in character to that which was being made to the Altoona Coal and Coke Company and the Glen White Coal and Lumber Company, and an effort was subsequently made by the plaintiff to secure from the defendant such a payment, but this was refused upon the ground that as the defendant was itself prepared and willing to perform the service, it was not incumbent upon it to make the plaintiff any payments for performing the service.

The plaintiff neither alleged nor attempted to prove that the payments made to the Altoona, Glen White and Millwood Companies were, considering the character of the service rendered by them, excessive. Its theory, on the contrary, was that they could not properly be regarded as made for services at all, and must consequently be regarded as freight rebates, and that being such, their payment gave to the plaintiff a right of action to recover similar rebates

ARGUMENT.

The effort of the plaintiff in the present case is to recover a portion of the tariff rates on all the shipments involved in the action. As to certain of these shipments it has already secured, through the voluntary action of the defendant, a repayment of a portion of the rate, and as to these the plaintiff now seeks to recover a further portion. As to the remainder of the shipments, the tariff rate having been paid, and no portion having been refunded by the defendant, the effort is to compel it to make such a refund.

We submit that the courts of the United States are not empowered to grant relief of this character, and that the Circuit Court was consequently right in dismissing the case.

The decisions of this court, as we read them, have definitely determined that because of the controlling force and effect given to the tariff rates of a carrier by the provisions of the Interstate Commerce Act, both shipper and carrier are equally bound thereby; that the one is under as great an obligation to pay as the other is to charge and collect the same, and that if a shipper desires to secure relief from these rates, the procedure to be followed must be that which is prescribed by the Interstate Commerce Act, viz., a resort to the Interstate Commerce Commission for relief from the effect of the rates. In the case of *Texas & Pacific Railway Company vs. Abilene Cotton Oil Company*, 204 U. S., 426, this court applied this rule in a case in which a shipper was seeking relief from what he claimed was an unreasonable tariff rate, and in the case of *Robinson vs. Baltimore & Ohio Railroad Company*, 222 U. S., 506, in a case in which a shipper was seeking relief from what he claimed was an unduly discriminatory rate.

The difficulty in the way of the plaintiff is the same as that which was held to be insurmountable in the *Robinson* case, and that is that a court is not the proper tribunal to set aside or annul the tariff rates of a carrier. This court has settled that this power belongs exclusively to the Interstate Commerce Commission, and it would seem necessarily

II

to follow that courts cannot indirectly relieve shippers from the controlling effect of such rates by permitting recoveries off any portion thereof until at least the shipper has been relieved from the binding force of such rates by action of the Commission. The tariff rate is binding both upon shipper and carrier; the obligation to observe the same is absolute and is, in effect, statutory in character; and the defendant, therefore, was bound to charge and collect, and the plaintiff was bound to pay the rates which were actually charged and paid. Both parties, then, being so bound how can an action be maintained by one to recover from the other damages claimed to have been sustained because of the payment demanded and made, when this payment represented a charge which the one party was legally obliged to make and the other one legally obliged to pay? Is it not essential to a recovery in the present case that the plaintiff should have established that it had been required to pay a rate which the defendant ought not to have charged, and when it appears that the rate which was charged was the only one which could have been lawfully charged, does not necessarily the whole basis for the action disappear?

During the period in which the shipments were made as to which the plaintiff seeks to recover, the Interstate Commerce Act contained the following provisions:—

“Section 6. * * * And when any such common carrier shall have established and published its rates, fares and charges in compliance with the provisions of this Section, it shall be unlawful for such common carrier to charge, demand, collect or receive from any person or persons a greater or less compensation for the transportation of passengers or property or for any service in connection therewith than is specified in such published schedule of rates, fares and charges as may at the time be in force.

“* * * It shall be unlawful for any common carrier party to any joint tariff to charge, demand, collect or receive from any person or persons a greater or less compensation for the transportation of persons or prop-

erty, or for any services in connection therewith between any points as to which a joint rate, fare or charge is named thereon than is specified in the schedule filed with the Commission in force at the time."

And by Section 10 violations of either of the above provisions were declared to be misdemeanors, and any carrier convicted thereof was made subject to a fine of not exceeding \$5000 for each offense.

If the present action is maintainable, it would seem necessarily to follow that the defendant should have been at liberty to pay to the plaintiff the amount demanded. And yet it will hardly be claimed that it could have made such a payment in view of the statutory obligation imposed upon it not merely to collect, but to retain, the tariff charges which it demanded and received, and when such payment would have subjected it to the penalties prescribed by the Act for failure to observe its tariff rates.

It will doubtless, however, be contended upon the part of the plaintiff that even if primary jurisdiction is vested in the Interstate Commerce Commission to consider and determine whether a given rate or system of rates offends against the provisions of the Interstate Commerce Acts, and to grant relief therefrom, so long as the rate or system of rates is in existence, the courts can exercise primary jurisdiction after the rates have ceased to exist and when the relief sought by a shipper has to do exclusively with the past, and when in order to afford this relief it is not necessary to find unlawful or disregard any existing rate or system of rates. No foundation, however, we submit, exists for a distinction of this character, for while the rates were in force they were controlling and binding upon shippers and carriers, and their mere annulment or cancellation by the voluntary action of the carrier cannot have the effect of depriving them during the period that they were in force of the same effectiveness that they possessed before their cancellation.

Such a contention, moreover, would be wholly at variance, we submit, with the view of the Interstate Commerce Act

which controlled the decisions of this court in the Abilene and Robinson cases. The right of the court to entertain the claim of the plaintiff in the Abilene case was denied mainly upon the ground that unless one tribunal was to consider and pass upon claims affecting the reasonableness of rates charged by a carrier, inequalities in charges would necessarily result, due to the conflicting views of the various tribunals that would be called upon to determine the questions at issue. How would it tend to relieve the situation of this difficulty and to bring about absolute equality of charge as between various shippers proceeding before various tribunals to recover because of alleged unreasonable or discriminatory rates charged them that the tariffs covering the rates were no longer in force?

But the possible contention with which we are dealing is really answered and disposed of by the following extracts from the opinion in the Abilene case:—

“Although an established schedule of rates,” said the present Chief Justice, “may have been altered by a carrier voluntarily or as the result of the enforcement of an order of the Commission to desist from violating the law, rendered in accordance with the provisions of the statute, it may not be doubted that the power of the Commission would nevertheless extend to hearing legal complaints of, and awarding reparation to, individuals for wrongs unlawfully suffered from the application of the unreasonable schedule during the period when such schedule was in force.” (Page 442.)

“When the Commission is called upon on the complaint of an individual to consider the reasonableness of an established rate its power is invoked not merely to authorize a departure from such rate in favor of the complaint alone, but to exert the authority conferred upon it by the Act, if the complaint is found to be just, to compel the establishment of a new schedule of rates applicable to all. And like reasoning would be applicable to the granting of reparation

to an individual after the establishment of a new schedule because of a wrong endured during the period when the unreasonable schedule was in force by the carrier, and before its change and the establishment of a new one. In other words, the difference between the two is that which on the one hand would arise from destroying the uniformity of rates which it was the object of the statute to secure, and, on the other, from enforcing that equality which the statute commands." (Page 446.)

What was said in the Abilene case had, of course, reference to claims based upon the exaction of alleged unreasonable rates. The like considerations, however, would seem necessarily to apply to claims based upon the exaction of alleged discriminatory rates, and indeed this court in the Robinson case has treated the decision and reasoning in the Abilene case as applicable to and controlling in cases in which the question involved had to do with discrimination in rates.

But wholly apart from what was said in the opinion of the Court in the Abilene case, the points at issue and which were determined in that and in the Robinson case would seem to leave no basis for the contention that courts can accord relief to shippers who have paid unreasonable or unduly discriminatory charges if the relief sought has reference to past transactions solely and is wholly dissociated from any questions affecting the lawfulness of existing rates.

In both these cases the actions had been instituted by shippers to recover charges which they had paid and in neither was any attempt made to secure redress because of any existing rate. Indeed, it does not even appear from the report of the cases that the rates which formed the subject of the complaints were still in existence. But notwithstanding this it was held that the actions were not maintainable because the payments made were in conformity with rates which were as binding upon the court as upon the shippers complaining of them.

If the contention with which we have just been dealing were a sound one, an easy way would be open to carriers to avoid condemnation of their rates by the Interstate Commerce Commission. All that would be necessary to be done would be in case of a threatened proceeding to cancel or in some way modify or change the rates in force and the Commission would be thereby rendered powerless.

The objection to which this court in the Abilene case adverted to the maintenance of actions in the courts by shippers complaining of tariff rates, viz., that to uphold the right to maintain these actions would open the door to collusive proceedings in which the shipper would be permitted by the carrier to obtain a recovery which would thus secure for him a rebate from the rate, applies moreover, with as great force to actions which have to do with past rates as to those which are concerned with rates still in effect.

We submit, therefore, that the Circuit Court had not jurisdiction to afford to the plaintiff the relief claimed because of the fact that the right thereto necessarily rests upon the proposition that the court should itself pass upon and determine the question of the lawfulness of the defendant's tariff rates which were in force during the period of the action, a right or power which is not vested in the courts but in the tribunal specially constituted for this purpose by the Interstate Commerce Acts.

In the Abilene and Robinson cases this court had to deal with questions involving the rights of shippers who had paid the tariff rate to recover a portion thereof. The identical question is involved in the present case as to a large part of the shipments in respect to which the plaintiff is asserting a right of action. As to the balance, while the tariff rate was originally paid, a refund of a portion of the same was subsequently made by the defendant. But this distinction is really of no moment or materiality because after all the action of the court is invoked in order to secure for the plaintiff the benefit of transportation at lower charges or rates than the tariff rates which were in force at the

time the transportation service was rendered by the carrier, and if the plaintiff can secure the relief which it is seeking, the result will be that it will have recovered a portion of a tariff rate through the intervention and action of the courts, and the partial relief which he secured through the unlawful action of the carrier will have been further supplemented by an enforced refund of an additional portion of the rate. To hold that a shipper who has not paid the tariff rate because of the willingness of a carrier to forego a portion of it for his benefit can maintain an action to recover any portion of the rate that he did pay, would lead to this wholly inadmissible conclusion, that a shipper who had paid a tariff rate and who had been unable to obtain, or unwilling to accept, from the carrier a repayment of a portion of the same would have no standing in court in an action brought to recover a part of the rate, while his competitor, who had had no scruples about accepting a refund of a portion of the rate, could recover a still larger refund.

We conclude, therefore, that the present case, as to both the shipments as to which no refunds or rebates were paid by the defendant to the plaintiff, and as to those on which a rebate was paid, is identical in principle with the cases in which the question has arisen as to the right of the courts to entertain actions to recover any portion of a tariff rate, and in view of the decisions rendered, to which we have already referred, we do not feel justified in burdening the court with a further discussion of the question.

But a further objection than that to which we have above alluded exists in the present case to the exercise by the Circuit Court of the jurisdiction invoked by the plaintiff. The plaintiff's case rests upon the allegation that certain payments made by the defendant to some of its shippers were freight refunds or rebates. As to certain of the payments this was denied by the defendant, and as to the others it was denied that the payments, even if, in a legal sense, rebates, caused the plaintiff any injury or subjected it to discrimination forbidden by Section 2 of the Interstate Commerce Act. To sustain a recovery, therefore, the Circuit Court must necessarily have been empowered to determine whether

the payments made were or were not unlawful refunds or rebates, and whether as to those determined to be such the plaintiff had been discriminated against.

It is indisputable that if the payments complained of operated to secure an unlawful preference in favor of those to whom they were made, not only the plaintiff, but all shippers whose mines were located in the district or region in which the mines of the plaintiff were located, and they were a large number, were affected thereby, and if these payments gave rise to a cause of action on the plaintiff's part, they also necessarily gave rise to a cause of action on behalf of all of these other shippers. Under these conditions we submit that the determination of the question whether the payments were or were not unlawful was primarily for the Interstate Commerce Commission.

Attention has already been called to the circumstances connected with the payments made by the defendant to the Altoona, the Glen-White and the Millwood companies. To justify a recovery on account of these payments a determination by some tribunal that they were freight rebates or refunds was essential. The contention of the defendant was that they had no relation to freight rates and were not made for the purpose of refunding to these companies any parts of the rates which they had paid, but that, on the contrary, they were made for services rendered by these companies in the defendant's relief.

It will not be denied that if, as a matter of fact, the payments in question had been made for the purpose claimed by the plaintiff, they were lawful payments, and consequently afforded the plaintiff no basis for a cause of action.

In the case of *Interstate Commerce Commission vs. Peavy & Co.*, 222 U. S., 42, payments to shippers under proper circumstances were held by this court to be lawful:—

"The Act of Congress," said Mr. Justice Holmes, delivering the opinion of the court in that case, "in terms contemplates that if the carrier receives services from an owner of property transported, or uses instru-

mentalities furnished by the latter, he shall pay for them. That is taken for granted in Section 15, the only restriction being that he shall pay no more than is reasonable, and the only permissive element being that the Commission may determine the maximum in case there is complaint, or now, upon its own motion."

The provision in Section 15 of the Interstate Commerce Act which brought under the supervision and regulation of the Commission the allowances by carriers to shippers for service of the carrier or for the use of any instrumentality of the shipper used in connection with such transportation service was a recognition of a long existing and well-known practice of carriers. Indeed, the report for the year 1905 of the Interstate Commerce Commission to the Congress of the United States, which doubtless led to the enactment of the provision in Section 15 of the Act above alluded to, called attention to the existence of such a practice, and the report, while suggesting that it be brought under the supervision and regulation of the Commission, expressly refrained from recommending legislation which would prevent the continuance of the practice.

"There is an important class of cases," said the Commission in this report "in which the owner of the property performs a part of the transportation service, where the carrier, by paying such owner an extravagant sum for the services rendered, thereby prefers him to other shippers of like property. This may happen in any case where the shipper is the owner of any of the facilities of transportation or performs any part of the transfer service. Such performance may take the form of an excessive division to a terminal road owned by the shipper, the payment of an excessive elevator charge to the owner of the grain; the payment of an excessive mileage upon the private car which conveys the property of the owner of the car. Our investigations leave no room for doubt that all these methods are at the

present time more or less resorted to for the purpose or with the effect of preferring one shipper to another. It has been suggested that the Congress should prohibit railways from employing any agency or using any facility in the transportation of property which is furnished by the owner of the property. We hesitate to recommend at this time so drastic a measure as that. Assuming that such a law would be a constitutional exercise of authority, it would seriously interfere with property rights which have grown up under the present system. Moreover, there are many instances in which the services can be rendered or the facility furnished more advantageously both to shipper and railway, and without injury to the public, if provided by the shipper itself. We do think, however, that the Commission should be empowered in a case of this kind to determine whether the allowance to the property owner is just and reasonable, compensation for the service rendered and to fix a limit which shall not be exceeded in the payment made therefor. Such a remedy would not be altogether adequate, and any remedy is extremely difficult of application, but nothing better appears to be available."

Quite recently in the cases known as the "Tap Line" cases, 23 I. C. C. Rep., 277, the Interstate Commerce Commission has rendered a decision in respect to the validity of payments made by railroad companies to shippers which has a very direct application to the validity of those made to the Altoona, Glen White and Millwood Companies.

In this case the Commission had under consideration the lawfulness of certain allowances or payments made by a number of railroad companies in the Southwest to owners of lumber mills for services rendered in transporting the products of their mills over short lines of railroad owned by such owners and which intervened between the mills and the railroads of the railroad companies. As

a rule these short railroads were used both for the purpose of transporting logs to the mills and for transporting the lumber into which the logs were converted from the mills to the lines of the railroad companies.

The lawfulness of these allowances or payments both for the service of transporting the logs to the mills and the lumber from the mills to the lines of the railroad companies was dealt with by the Commission, and in respect to the allowances or payments made for the latter service, which corresponds with the service rendered by the Altoona, Glen White and other companies, the conclusion reached by the Commission was that these payments were lawful and justified in all cases in which they were made for services rendered by the lumber railroads which would have had to have been rendered by the railroad companies under the system of rates which they had in force.

It appeared that it was the practice of the railroad companies to treat their own freight rates as applicable from all mills which were distant not more than three miles from their lines although this did not appear on their tariffs, and the Commission accordingly held that wherever a lumber road transported or moved the cars from a mill within this distance to the tracks of the railroad company, the latter was justified in paying for the service.

Speaking of the practice that prevailed and of the right of the railroad companies to make compensation to the lumber lines, the Commission said:—

“In all cases it is apparently the practice of the trunk lines, where no allowance is made, to set the empty car at the mill and to receive the loaded car at the same point. Indeed they do this in many cases even when an allowance is made to the tap line. But whenever this service is performed by the trunk line, it is included in the lumber rate and is done without additional charge. In some instances the switch or spur track connecting the mill with the trunk line is as much as three miles

long. In other words, by their common practice the public carriers interpret the lumber rate as applying from mills in this territory apparently as far as three miles from their own lines. So far as the manufactured lumber is concerned, it may therefore be said that where a mill has a physical connection with a trunk line and is not more than three miles distant the transportation offered by the trunk line commences at the mill. If, therefore, a lumber company, having a mill within that distance of a trunk line, undertakes, by arrangement with the trunk line, to use its own power to set the empty car at the mill and to deliver it when loaded to the trunk line it is doing for itself what the trunk line, under its tariffs, offers to do under the rate. In such a case the lumber company may therefore fairly be said to furnish a facility of transportation for which it may reasonably be compensated under section 15 whether its tap line is incorporated or unincorporated. In other words, the lumber company thus does for itself what the trunk lines does with its own power at other mills without additional charge and what it must therefore do for the particular lumber company without additional charge. Under such circumstances we think the lumber company, under section 15, may have reasonable compensation when it relieves the trunk line of the duty. But an allowance under such circumstances is lawful only when the trunk line prefers, for reasons of its own and without discrimination, to have the lumber company perform the service. It is not lawful when the lumber company refuses to permit the trunk line to do the work."

There can be no doubt that the Altoona, Glen-White and Millwood companies performed services which in relief of the defendant in the sense that if they had not rendered them the defendant would itself have been obliged to perform them or to have procured others to perform them.

The evidence adduced before the Referee established that the rates of freight which the defendant had in force

throughout the period of the action from all mines in the Clearfield and Latrobe regions applied equally from the mines of the three companies to whom the payments in question were made. Having in force rates from these mines, it was obliged to perform or have performed the services incident to the movement of traffic to and from these mines, not merely from the point of junction with their branches with its road, but from the mines themselves. It was therefore bound to furnish or supply the service not merely over its own railroad, but over the branches as well.

That the rates in force applied in all instances from the mines is established by the testimony of Mr. Searles, the general coal freight agent of the company, which was to the following effect:—

“By MR. GOWEN :

“Q. All rates apply from the mines from which the coal is shipped, is that the case?

“A. Yes, sir; mines on our road.

“By MR. GILFILLAN :

“Q. Is not the rate from the junction point on your road to the point of destination?

“A. No, sir. I do not quite understand what you mean.

“Q. Do you mean to tell the Referee that the rate is from the mine of the Altoona Coal and Coke Company or from Kittanning Point to Philadelphia on shipments made to Philadelphia?

“A. It is from the mine of the Altoona Coal and Coke Company.

“Q. Does not this book which contains the rates, that printed portion, show from Kittanning Point?

“A. It may show from Kittanning Point; yes sir.

* * * * *

“Q. For instance, were not the rates quoted from Kittanning Point to Philadelphia on coal shipped from the Altoona Coal and Coke Company's mines to Philadelphia?

"A. It might have been shown on the tariff as Kittanning Point.

"Q. Had you any tariff at all which showed the rates in any other way?

"A. As to Kittanning Point?

"Q. Yes.

"A. I do not think we had at that time.

"Q. In every instance did not the tariff show from the point on the Pennsylvania Railroad nearest the mine to the point of destination?

"A. No; in many cases the tariff specified that the rates were applied from districts, points on the Tyrone and Clearfield Railroad, we will say, and points on the Pennsylvania and Northwestern Railroad, and points on the Cambria and Clearfield Railroad.

"Q. But were not the points always on the railroad?

"A. No.

* * * * *

"Q. Do you not know that the tariffs or rates were predicated from the point on the railroad nearest the mine to the point of destination?

"A. No. In many cases there is no station near the mine. The mine is some little distance away from the station. Our engines go up the branches and get that coal.

* * * * *

"Q. In the shipments of the coal and coke from the Altoona Coal and Coke Company's mines were not the freight rates predicated from Kittanning Point to the point of destination?

"A. We considered that they applied from the mine.

"Q. How was it stated on the tariff?

"A. I do not think it was so stated on that tariff.

"Q. Do you mean to say that the shipping point

for the Altoona Coal and Coke Company product was not from Kittanning Point?

"A. No; as I say, we considered that the rates applied from the mine."

(Transcript of Record, page 200.)

As already stated the defendant's tariffs or schedules did not refer specifically to the mines of the three companies, but only to the stations nearest to the mines, and in the case of the Altoona and Glen White Companies this was Kittanning Point, but in this respect the case was no different from that of all other mines, for on the schedules or tariffs which were put in evidence the rates were shown not from the mines, but from the stations nearest to the mines from which they applied. It was shown that in respect to the plaintiff's mines themselves the rates appearing on the schedules or tariffs were those from the nearest station, but that, as a matter of fact, these rates were applied by the defendant from the plaintiff's mines. This was established by the testimony of the president of the plaintiff company, which was to the following effect:—

"By MR. GILFILLAN:

"Q. You shipped a great deal of coal and coke by the Pennsylvania Railroad, did you not?

"A. Yes, sir.

"Q. Did you receive rates from the mine or from the station on the railroad?

"A. The rates we got were always from the station.

"Q. Did you ever hear of the rates being from the mine?

"A. No, sir; I never saw any. Any published rates I always saw always put it from the station.

* * * * *

"By MR. GOWEN:

"Q. The rates which you paid covered the transportation of the coal by the railroad from your mines, did they not?

"A. Yes, sir.

"By MR. GILFILLAN:

"Q. Do you mean that the rate was from the mines to the point of destination or from the station on the Pennsylvania Railroad to the point of destination?

"A. When I hauled it with my locomotive it was from the point of destination, but all our local rates would be from Gallitzin Station. That is the published rate. It would be a rate from Gallitzin. It was not from my mine or any other mine. The rate was given from the station.

"Q. From the station nearest the mine?

"A. Yes, sir.

"By MR. GOWEN:

"Q. The rate was published from the station nearest the mine, is that the case?

"A. Yes, sir.

"Q. But it was applied from the mine?

"A. Yes, sir; I should suppose it would.

"Q. In the case of all your mines, was not the rate applied from your mines?

"A. There was no rate between them, certainly.

"Q. You paid nothing more than the published rate from the nearest station?

"A. No.

"Q. Although the coal was transported by the railroad company from your mines.

"A. All except Gallitzin.

"Q. Except during a portion of the time from Gallitzin?

"A. Yes, sir."

(Transcript of Record, page 205.)

There can be no doubt, therefore, we submit, that the defendant had in force throughout the period of the action tariffs or schedules of rates which obligated it to perform the service over the branches of the Altoona, the Glen-White and the Millwood Companies, and that consequently the

services which these companies performed over these branches were for account of and in relief of the defendant.

Ample justification, therefore, existed for payments to these companies by the defendant of sums which should be compensatory for the services rendered.

The plaintiff in the present case neither alleged nor attempted to prove that the payments made were excessive, considering the character of the services rendered, and it was consequently not incumbent upon the defendant to introduce evidence to establish that they were not excessive.

The plaintiff's proposition was that the payments as a whole were unlawful because made to shippers for services which they themselves and not the defendant were under obligation to perform. The answer to this proposition is that the shippers receiving these payments were rendering services which the defendant was under obligation to them to furnish or to have furnished, and that consequently the payments were not made for services which the shippers were themselves under obligation to furnish.

We are, of course, aware that this court is not called upon to determine whether the payments made to the Altoona, the Glen White and the Millwood Companies were for services rendered or were intended as freight refunds or rebates. We have thought it proper, however, to direct the court's attention to the facts relied upon by the defendant as justification for the payments in order that the court may see that, to put it mildly, a very substantial basis exists for the defendant's contention that the payments had no relation to freight refunds or rebates.

Notwithstanding the considerations to which we have alluded the Referee in the present case held that the payments in question were to be regarded as freight rebates, upon grounds which, to say the least, are far from convincing. It is also true that the Circuit Court declined to disturb or overrule his findings in this respect.

"Whether," said Judge McPherson, in his opinion disposing of the exceptions filed to the Referee's report, "it was such a compensation as the defendant might

lawfully pay, or whether it was an unlawful rebate in disguise, was a question of fact, and the Referee has decided it in favor of the plaintiff. With this finding I agree. There is some room for doubt in the evidence on this point, but when all is said (and much has been ably said on behalf of the defendant) I see no sufficient reason to differ from the Referee's conclusion. The defendant made no effort to prove the money value that might properly be put upon the use of the various branches or upon the services rendered by the locomotives of the favored shippers, and the failure to throw light upon this obviously important matter is, I think, not without significance."

It is evident from this quotation that in reaching the decision that he did Judge McPherson was largely influenced by the consideration that the defendant, as he put it, "made no effort to prove the money value that might properly be put upon * * * the services rendered." It is true that no such effort was made, but it is equally true, we submit, that it was not incumbent upon the defendant to make such an effort. The plaintiff had not attacked the payments upon the ground that they were unreasonable. Its claim was that they were unlawful and were not intended as compensation for services, and that consequently it was entitled to recover the amount of the payments as a whole. Under these conditions, we submit, the defendant was not called upon to introduce proof as to the reasonableness of the payments, and the inference which Judge McPherson drew from its omission to do so was not warranted.

There was one important consideration which has, we submit, a very direct bearing on the question whether the payments were really freight rebates, which Judge McPherson fails to notice in his opinion. It appeared that a very large proportion of the coal and coke transported over the branches of the three companies to whom the payments were made was not transported for their account, due to the fact that this coal and coke had been sold by them at the mines, and the purchasers thereof were consequently the

shippers who were responsible for and actually paid the transportation charges of the defendant. For the service rendered in transporting all this coal and coke the railroad company made payments, and it was affirmatively established that all of these payments were retained by the companies receiving them. Is it conceivable that such payments would have been made if they had been intended as freight rebates? Rebates are paid in order to reduce the rate of freight paid by some shipper, but who ever heard of rebates being paid to persons who were not shippers and who were in no wise responsible for and had nothing to do with the payment of the freight rates as to which the rebate was paid?

The question involved as pointed out by Judge McPherson, is one of fact, and being such there can be no assurance that the same determination will be reached in all actions instituted in the courts in which the question is raised. In this very case it is quite probable that if the Referee's conclusions had been adverse to the plaintiff's contentions, they would not have been overruled by the Circuit Court, and certainly it is true that assuming that there is sufficient evidence which would warrant the submission to a jury of the question whether the payments were freight rebates, the question is such a disputable one that it would be inadmissible to assume that the same conclusion would be reached by every jury to which it might be submitted for determination.

A somewhat different question is presented in respect to the payments made to the Bolivar and Latrobe Companies. The same question of fact which is involved in the determination of the question whether the payments made to the other three companies were or were not lawful does not exist in respect to these payments, but nevertheless an issue is involved in the determination of the question whether the plaintiff because of the payments can secure the reparation which it is seeking which must be determined primarily by the Interstate Commerce Commission. The payments may have been unlawful in the sense that they in-

volved a departure from the tariff rates, but this fact did not, of course, confer a right of action upon the plaintiff. It was essential for it to go further and establish that as a result of such payments the defendant had violated Section 2 of the Interstate Commerce Act, and that as a result of such violation the plaintiff had sustained injury entitling it to assert a cause of action against the defendant.

But unless we have misapprehended the decision of this court in the Robinson case, *supra*, this was a question which was primarily for the consideration and determination of the Interstate Commerce Commission. In that case one of the questions involved was whether a shipper who had paid a tariff rate which the Interstate Commerce Commission itself had declared unlawful because discriminatory could maintain an action in the courts to recover the portion of the rate which the Commission had condemned in the absence of an order of the Commission directing that reparation be made to those who had been charged and had paid the higher and discriminatory rate, and it was held by this court that the right of action attempted to be asserted could not be sustained because it had not been shown that the Commission had directed that reparation should be made to those who had paid the rate which had been declared unlawful. It would seem necessarily to follow, therefore, that in the present case, even upon the assumption that the plaintiff had been subjected to discrimination forbidden by Section 2 of the Interstate Commerce Act, as the result of the payments made to the Bolivar and Latrobe companies, its right to reparation was not thereby established, because it was for the Commission to determine whether, under all the facts and circumstances, reparation should be awarded. There can be no substantial doubt, we submit, that the plaintiff, if it had appealed to the Commission, would not have been able to secure reparation because of the payments made to either the Bolivar or Latrobe Companies in respect to their coke shipments for the entire period of the action, or to the Latrobe Company in respect to its coal shipments for much the larger portion of the period of the action, due

to the fact that the payments made to these companies did not bring their rates down to the level of those paid by the plaintiff. As the plaintiff, therefore, was not charged more, but on the contrary, less, than these companies on the shipments which the plaintiff contended were of a like character, no cause of action could properly be asserted on its part, for such a right arises only when the complaining shipper was charged more than the other shipper of whose rates he complains. But this is a consideration that has to do perhaps more with the merits of the case than with the question of the jurisdiction of the Court to entertain the action.

The objection to which we have been referring would also equally apply to the right of the plaintiff to recover in the present action because of the payments made to the Altoona, Glen White and Millwood Companies. These payments might be declared unlawful, and yet the difficulty would still exist so far as the plaintiff was concerned that whether this fact justified a recovery on his part was one that the Interstate Commerce Commission must first pass upon.

In its administration of the Interstate Commerce Act the Commission in many instances has condemned as unlawful, because unreasonable or discriminatory, rates which have been exacted from shippers, while at the same time denying reparation to them.

In *Anaconda Copper Mining Company vs. C. & E. R. R. Co., et al.*, 19 I. C. C. Rep., 592 (1910), it appeared that the complainant, whose works were located in Montana, had been receiving shipments of coke from the West Virginia-Pennsylvania coke field on which a rate of freight had been paid which was made up by combining the rate from the coke ovens to Chicago and the rate from Chicago to the complainant's works.

The rate between the coke ovens and Chicago which was used in this combination was higher than another rate on coke between the ovens and Chicago, the carrier concerned in the rate having in force two rates, one of which, and the lower, was applied to coke shipped for use in blast fur-

naces, and the other, or higher rate, to coke which was intended for any other use.

The complainant contended that these two different rates were not justified, and that as it had been charged the higher rate, due to the fact that this higher rate had been used in making up the combined rate, it was entitled to recover the difference between the amounts which it had actually paid and the amount which it would have paid had the lower rate between the ovens and Chicago been used in arriving at the combined rate.

The Commission held that the two rates between the coke ovens and Chicago were not lawful, but it nevertheless declined to award damages to the shippers who had paid the higher rate.

In *International Salt Company v. Pennsylvania Railroad Company, et al.*, 20 I. C. C. Rep., 539 (1911), reparation was sought by the complainant under the following circumstances:—

The defendants in the proceeding had had in force rates on salt from a salt field in New York to Chicago and to Detroit. In a proceeding instituted by the Delray Salt Company, located at Detroit, the Detroit rate had been held by the Commission to be discriminatory by comparison with the rate to Chicago, and its reduction had been ordered and reparation awarded to the salt company the complainant in that proceeding.

Thereupon the International Salt Company which had also shipped to Detroit under the rate condemned, commenced a proceeding to secure reparation, but this was denied by the Commission upon the ground that the Delray Salt Company had been awarded reparation in the original proceeding because not being a shipper under the Chicago rate it had been injured because of the preferential character thereof and was consequently entitled to recover damages, while the International Company had not been so injured because of the fact that it had been a shipper to Chicago as well as to Detroit, and consequently was not in a position to allege that it had been injured as the result of the preferential rate to the former place.

As we have already pointed out, many other shippers than the plaintiff were affected by the payments in question, and the determination of their lawfulness and injurious effect upon these shippers requires uniformity of decision if differential treatment of the various shippers is to be avoided. Indeed, it is difficult to conceive of a case to which the reasons would more strongly apply than in the present one which induced the court in the Abilene case to hold that the issue raised in that case was not one which could be committed to the decision of any other tribunal than the Interstate Commerce Commission.

The plaintiff was but one of a large body of shippers, all of whom would have the right to recover in the event that the payments made by the defendant were found to be unlawful freight rebates and injuriously discriminatory to such shippers. If actions were brought by these shippers, it might well happen that some would recover because the question of fact as to whether or not the payments were rebates would be resolved in their favor by the juries to whom the question would have to be submitted, while others less fortunate would fail because of an adverse finding on this point in the actions instituted by them. Under such conditions the uniformity of charge, which was one, if not the main, purpose of the Act, would have disappeared and a condition would have been created which this court in the Abilene case thus characterized:—

“For if, without previous action by the Commission, power might be exerted by courts and juries generally to determine the reasonableness of an established rate, it would follow that unless all courts reached an identical conclusion a uniform standard of rates in the future would be impossible, as the standard would fluctuate and vary, dependent upon the divergent conclusions reached as to reasonableness by the various courts called upon to consider the subject as an original question. Indeed the recognition of such a right is wholly inconsistent with the administrative power con-

ferred upon the Commission and with the duty, which the statute casts upon that body, of seeing to it that the statutory requirements as to uniformity and equality of rates is observed. Equally obvious is it that the existence of such a power in the courts, independent of prior action by the Commission, would lead to favoritism, to the enforcement of one rate in one jurisdiction, and a different one in another, would destroy the prohibitions against preferences and discrimination, and afford moreover, a ready means by which, through collusive proceedings, the wrongs which the statute was intended to remedy could be successfully inflicted. Indeed no reason can be perceived for the enactment of the provision endowing the administrative tribunal, which the Act created, with power, on due proof, not only to award reparation to a particular shipper, but to command the carrier to desist from violation of the Act in the future, thus compelling the alteration of the old or the filing of a new schedule, conformably to the action of the Commission, if the power was left in courts to grant relief on complaint of any shipper, upon the theory that the established rate could be disregarded and treated as unreasonable without reference to previous action by the Commission in the premises."

It seems to be a theory of the plaintiff that the exclusive primary jurisdiction of the Commission cannot be invoked in the present case because of what is designated as the secrecy surrounding the payments made by the defendant. While it is not perceived how the jurisdiction of the Commission can be affected by any such consideration, there is, as a matter of fact, no warrant for the charge that the payments in question were made secretly by the defendant. There is absolutely no evidence in the case which tends to establish that the defendant made the slightest effort to conceal from anyone the fact that it was making these payments. On the contrary, its records and papers were so kept that it was able to produce when called for not merely

books containing references to these payments, but the letters which authorized the payments and made changes from time to time in the amount thereof.

The secrecy, therefore, which the plaintiff's counsel considers to be of significance was wholly lacking. Indeed, the president of the plaintiff himself testified that the fact had been known to him throughout the period of the action that payments were being made to the Altoona and to the Glen White Companies. He testified that he had not known of the payments to the other companies, but there was no reason why he should have known of these as their operations were not even in the region or district in which his mines were located.

Another theory of the plaintiff seems to be that the defendant was under some obligation because of the provisions of Section 6 of the Interstate Commerce Act to give notice by its tariffs or schedules of rates of the payments that it was making to the Altoona, Glen White and Millwood Companies, and that the omission of such notice deprived the Interstate Commerce Commission of the primary jurisdiction which it otherwise would have had over the question of the lawfulness of these payments, and of their injurious effect upon the plaintiff. It is not perceived how the omission of the defendant to comply with the requirements of Section 6 of the Act could have the effect of depriving the Commission of jurisdiction which it otherwise would have possessed, but apart from this consideration the obligation which the plaintiff argues was imposed upon the defendant by Section 6 of the Act is, we submit, non-existent. That section, as it stood throughout the period of the action, required that the schedule of carriers on file with the Commission should contain "the rates, fares and charges for the transportation of passengers and property, * * * and the terminal charges, and any rules or regulations which in any wise changed, affected or determined any part of the aggregate of such aforesaid rates and fares and charges."

Under this language the defendant, we submit, was not required to publish the payments made by it to shippers for services rendered by them, for such payments were neither

"terminal charges" nor "rules or regulations" which had any relation to the rates or fares or charges of a carrier.

The provision in question was intended to require carriers to show clearly all the charges which shippers generally would be subject to, and any matter or thing which would affect or determine the amount of the rates or charges shown on the tariffs. It was never intended that a carrier should embody in its tariffs all payments made for services rendered to it or for its account by a shipper. When the Congress in 1906 legislated in respect to payments to shippers, all that it undertook to require was that the charges and allowances therefor "shall be no more than is just and reasonable." The obligation to show them upon the carrier's tariffs was not imposed. There are many instances in which a carrier might for short periods or in some emergencies desire to employ the service of a shipper in the performance of some transportation service, and it certainly never could have been intended under Section 6 of the Act that this could not be done unless the carrier had previously shown on its tariffs or schedules on file with the Commission the payments which it was prepared to make for such services.

Finally the plaintiff recites the agreement of reference and argues that this in effect operates to prevent the defendant from raising any question as to the jurisdiction of the court to entertain the action. It is immaterial whether the defendant is or is not in a position to raise this question, for the jurisdiction which the court below would have been obliged to exercise in order to enter a judgment in favor of the plaintiff was that which it possessed as a Federal Court. Under these circumstances what was said by this court in *Baltimore and Ohio Railroad Company vs. Pitcairn Coal Company*, 215 U. S., 481, is applicable:—

"The nature of the controversy," said the present Chief Justice, delivering the opinion of the Court in that case, "and the relief which it requires is such that even without the assigned error to which we have

referred the question at the very threshold necessarily arises and commands our attention as to whether there was power in the courts under the circumstances disclosed by the record to grant the relief prayed consistently with the provisions of the Act to regulate Commerce."

That the jurisdiction at issue is that of the Circuit Court as a Federal Court cannot well be denied.

"On this question" (*i. e.*, the right of the Circuit Court to entertain the action) said Circuit Court Judge Gray, delivering the opinion of the Circuit Court of Appeals, which will be found at page 45 of the brief of the plaintiff in error, "it seems to us clear that the jurisdiction to entertain the suit of the plaintiff who complains of violations of the Interstate Commerce Act and seeks to recover damages therefor, has been conferred upon the Circuit Court as Federal Courts. The jurisdiction of the Circuit Court is conferred by the Interstate Commerce Act, and the question whether in the present case the plaintiff, under the provisions of the statute, as interpreted by the Supreme Court, was not required primarily to apply for investigation and redress to the Interstate Commerce Commission, is one that affects the court's jurisdiction as a Federal Court."

Indeed, if the jurisdiction of the Circuit Court as a Federal Court is not at issue in the present case, the plaintiff in error has no standing in this court, for it is only in respect to questions affecting the jurisdiction as such of the Circuit Courts that this court is empowered to review the decision of the Circuit Court on appeals or writs of error directly to that court.

But even if the question of jurisdiction was not one which this court is bound to notice and take cognizance of, the defendant has not, we submit, been debarred by its agreement to refer, from raising the question.

The plaintiff treats the agreement of reference as if it were almost tantamount to, or the same as, an agreement to arbitrate, whereas it has no such significance or effect. It was entered into pursuant to an Act of the State of Pennsylvania under the terms of which the parties to a cause can waive a jury and have the issues of fact and also of law submitted primarily to a Referee selected by them. The Referee so appointed makes findings of law and fact which are subject to exception, and upon the hearing and determination of these exceptions the court in which the cause is pending enters such judgment as it thinks warranted under the facts and the law. There are statutes of the State of Pennsylvania providing for and regulating the method to be pursued in case of submission by the parties to arbitration, but the proceedings under these statutes are of a wholly different character from the proceeding which was had in the present case.

Nor is there any basis for the plaintiff's suggestion that the agreement of reference in any way operated to its disadvantage because of the fact that if it had not been entered into the plaintiff might have proceeded before the Interstate Commerce Commission at a time when such proceeding would not have been barred by the statute of limitations. As to this it is only necessary to call attention to the fact that the period covered by the action expired May 1st, 1901, while the agreement of reference was entered into on April 24th, 1907, six years, less one week, after the close of the period. The limitation to which the plaintiff was subject under the Acts of Pennsylvania was six years, and hence it followed that on April 24th, 1907, when the cause was referred, the right of action on all of the shipments embraced in the action had been barred with the exception of those made in the week intervening between April 24th, and May 1st, 1901.

FRANCIS I. GOWEN,
JOHN G. JOHNSON,

For Defendant in Error. X

MITCHELL COAL AND COKE COMPANY *v.*
PENNSYLVANIA RAILROAD COMPANY.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

No. 674. Submitted December 4, 1912.—Decided June 9, 1913.

Pennsylvania Railroad Co. v. International Coal Co., *ante*, p. 184, followed to effect that the courts have jurisdiction of a case brought by a shipper against a carrier for the amount of damages actually sustained by him for charging him the full tariff when it was carrying the same goods the same distance for other shippers at lower rates but that such damages must be sustained by proof as to the amount thereof.

The court have not jurisdiction of a suit brought by a shipper against a carrier for damages by reason of paying other shippers of similar

goods an unreasonable amount for services in connection with such transportation, unless and until there has been a finding by the Interstate Commerce Commission that the payments so made to the other shippers were unreasonably large.

A carrier has the right under the Act to Regulate Commerce to pay shippers a reasonable allowance for services in connection with transportation of goods shipped by them, and the allowance paid must be treated by the courts as *prima facie* reasonable until the Interstate Commerce Commission has determined otherwise.

When the case is here on a question of jurisdiction only, this court cannot pass upon questions which go to the merits.

There is a necessity, which is recognized by the Act to Regulate Commerce, of having questions as to reasonableness of rates and allowances settled by a single tribunal in order to avoid the conflicting decisions which would result if several different tribunals could pass upon the same question; and the act itself has designated the Interstate Commerce Commission as that tribunal.

Allowances for lateral hauling may be lawfully paid, as they become unlawful only when unreasonable; whether unreasonable either past or future is a rate-making question over which the courts have no jurisdiction, even if the parties attempt to give it by consent.

This action, having been commenced without any application having been made to the Interstate Commerce Commission to declare unreasonable the allowances paid by the carrier for lateral hauling, the case must be remanded for dismissal, but the dismissal is stayed to give plaintiff an opportunity to make such application with the right to the carrier to be heard on the defense of limitations as well as other defenses.

192 Fed. Rep. 475, affirmed in part and reversed in part.

THE facts are stated in the opinion.

Mr. George S. Graham for plaintiff in error.

Mr. John G. Johnson and *Mr. Francis I. Gowen* for defendant in error.

MR. JUSTICE LAMAR delivered the opinion of the court.

On November 20, 1905, the Mitchell Coal and Coke Company brought suit in the Circuit Court of the United States for the Eastern District of Pennsylvania against

the Pennsylvania Railroad for damages alleged to have been occasioned by the payment of rebates to the Altoona, Glen White, Millwood, Latrobe and Bolivar Companies. The complaint alleged that between April 1, 1897, and May 1, 1901, the plaintiff, in competition with these companies, made shipments of coal and coke over the Pennsylvania road from the Clearfield District to the same general markets in other States and that, during all that time, the carrier paid rebates to these companies, pretending that the money given them was an allowance for transportation services rendered by them, in hauling cars over spur tracks between their mines and the railroad station.

The parties stipulated that the case should be submitted to a Referee, who should have the powers of a special master. His findings were in favor of the plaintiff. His report, modified as to the measure of damages, was confirmed (181 Fed. Rep. 403), but before judgment was entered thereon the carrier moved to dismiss the case because the court, as a Federal court, had no jurisdiction of the cause of action until after the Interstate Commerce Commission had passed upon the legality of the allowances and the reasonableness of the amount paid to shippers for hauling cars between their mines and the station. The motion was granted (183 Fed. Rep. 908), and the case was taken by writ of error to the Circuit Court of Appeals, which dismissed the case (192 Fed. Rep. 475) upon the ground that the question could only be reviewed by the Supreme Court of the United States. A writ of certiorari was denied (223 U. S. 733), and the plaintiff thereupon brought the case here by direct writ of error, the judge certifying the following as the jurisdictional question:

"Has the Circuit Court of the United States, in advance of any application to the Interstate Commerce Commission and action thereon by that body, jurisdiction to entertain an action of trespass brought by a shipper of coal

and coke to recover damages because of alleged unlawful preferential rates accorded to other and competing shippers of coal and coke, when such alleged preferential rates are claimed to have resulted from payments made to such other shippers, which payments the plaintiff claimed were rebates from the published and filed freight rate, and the defendant claimed were made as compensation for services rendered by such shippers or for other accounts which justified it in making the same, and when it further appeared that such payments had been made pursuant to a practice of long standing, and that a number of shippers other than the plaintiff were interested in the question of the lawfulness thereof."

1. The plaintiff's cause of action for damages occasioned by the payment of illegal or unreasonable allowances was one which, under §§ 8 and 9 of the Commerce Act (24 Stat. 382), could only be brought in a District or Circuit Court of the United States. The motion to dismiss challenged the jurisdiction of the court, as a Federal court, and its power "primarily to hear complaints concerning wrongs of the character of the one here complained of." *Texas &c. Ry. Co. v. Abilene Co.*, 204 U. S. 426, 442; *B. & O. R. v. Pitcairn Coal Co.*, 215 U. S. 481, 495; *Robinson v. B. & O.*, 222 U. S. 506. The order of dismissal was founded on the denial of jurisdiction, and this court has power to review that ruling. *Ira M. Hedges*, 218 U. S. 264, 270; *The Steamship Jefferson*, 215 U. S. 130. The case differs from *Darnell v. Illinois R. R.*, 225 U. S. 243. There the Commission had found that the rate was unreasonable. The demurrer, based on the failure to allege that a reparation order had been made in favor of the plaintiff, did not attack the jurisdiction of the court, as a Federal court, since the cause of action sought to be enforced was one which, if properly brought could, under the act of June 18, 1910 (36 Stat. 539, 554, c. 309), have been maintained either in a state or Federal court.

2. In the present case the motion to dismiss for want of jurisdiction was made at the end of the trial and was based, not upon the pleadings, but upon the evidence. It becomes necessary, therefore, to make a statement of the facts material to that issue:—The plaintiff, the Mitchell Coal and Coke Company, owned six coal mines in the Clearfield District, and between 1897 and May 1, 1901, shipped its products over the Pennsylvania Railroad in state and interstate commerce. During that time the provisions of the Commerce Act were constantly violated and there were many instances in which the carrier gave secret rates to shippers from whom it collected the full tariff and subsequently refunded the difference between the legal and the illegal rate. Many such rebates were paid to the plaintiff, the Mitchell Company, which in this case claimed the right to recover, as damages, the difference between these rebates paid to it and what it claimed were the additional rebates paid to the Altoona and other companies mentioned in the declaration. The Referee found that, for a part of the time, 70 per cent. of plaintiff's shipments had been made at secret rates, and held, citing *Pa. R. R. v. International Co.*, 173 Fed. Rep. 1, 9, that, as to this tonnage, the plaintiff was as much a violator of the statute as was the carrier and that no cause of action arising out of this illegal contract would be enforced by the courts. He therefore limited the inquiry to a consideration of the damages in respect to that part of the plaintiff's shipments on which no rebates had been paid.

From the Referee's report, and the testimony returned therewith, it appears that Clearfield District is the name given to a large coal field reached by the lines of the Pennsylvania Railroad. In this district there were many mines—some near the railroad and others at considerable distances therefrom, but all reached by lateral lines or spur tracks, over which cars were carried to and from the

mines. This Clearfield District was treated as a single shipping station, and the rates from all points therein were the same where coal was transported to the same point beyond the State. The published tariff named the rate from station to destination, but it was uniformly construed to include the haul from the mine. The published rate was so applied on all shipments made by the plaintiff as well as on those made by the Altoona and other companies named in the complaint.

It further appeared that to these companies the carrier paid what is called a trackage or lateral allowance, claiming that it was compensation allowed them for hauling cars from their mines to the station. The defendant's contention that there was no concealment of these payments is controverted by the plaintiff, which insists that it had no knowledge of such payments until 1898, when its officers were informed that the railway was paying some companies 10 cents a ton for such services. The Mitchell Company, the plaintiff, thereupon bought an engine to be used for that purpose at its Gallitzin mine and with this engine hauled cars, loaded and empty, between that mine and the station. For this work it demanded that the defendant should pay the same lateral allowance of 10 cents a ton that the railroad paid other companies for similar services. The carrier contended that it was itself prepared to do the switching at the Gallitzin mine, though, on account of dissimilarity of conditions, it could not economically do so at the Altoona and other mines referred to in the complaint. It therefore declined to pay a lateral allowance to the plaintiff, but offered to continue to treat this haul as included in the rate and to do that work without extra charge to the Mitchell Company. The plaintiff then offered to do the hauling for less than 10 cents, the exact amount not appearing. The proposition having been declined in 1899, the plaintiff, on November 20, 1905, brought this suit, offering evidence to show that in some

cases the allowance was as high as 18 cents a ton instead of 10 cents, as it had previously understood.

In addition to the Gallitzin mine, the plaintiff owned five others in the Clearfield District. They were located at points from 1,100 to 3,000 feet from the railroad and were reached by spur tracks belonging to the plaintiff, over which cars were hauled by the locomotives belonging to the Pennsylvania Railroad. For this service the carrier made no extra charge, treating it as included in the rate, though the tariff published the rate as from station to destination.

The mines of the Altoona, Glen White and Millwood Companies were located in the Clearfield District, while those of the Latrobe and Bolivar Companies were near by in the Latrobe District.

The Millwood was reached by a narrow gauge track, over which cars were hauled by that coal company's narrow gauge engines. For doing that work it was paid a lateral allowance of 15 cents a ton until April, 1899, and after that date 10 cents a ton.

The Glen White mine was about three miles from the main road and was reached by a spur having light rails, steep grades and sharp curves, over which the evidence tended to show that the engines of the railroad could not be safely or economically operated. This company transported the coal cars with its own engine and for doing that work the defendant paid it a lateral allowance of 15 cents a ton. On December 28, 1901 (subsequent to the transactions involved in this litigation), the carrier gave notice that it would discontinue lateral allowances on coke, but would allow 15 cents per ton on coal.

The Altoona mine was reached by a spur track, over which, with its own engines, the Altoona Company hauled cars and was paid a lateral allowance of 13 cents on coal and 10 cents on coke to points on the Hollidaysburg Branch, and 18 cents on coal and 20 cents on coke to

points east of Altoona. On December 28, 1901, this lateral allowance on coal was discontinued and that on coke reduced to 12 cents a ton. On January 1, 1902, all lateral allowances were discontinued.

Inasmuch as the payments to the Altoona were larger than those to any other coal company, the plaintiff claimed that they were the legal measure by which damages were to be assessed. The evidence was therefore specially directed to the situation at this mine, which was a little over three miles in an air line from the railroad and eight hundred feet above the station level. The grade was, not only very steep, but it was necessary to make use of three switchbacks in order to reach the elevation of the mine. The line was thus lengthened so as to be about 5 miles in length. The curves on this track were very sharp; the rails were light, and only specially constructed engines could be used. There was evidence that before the Pennsylvania's locomotives could have been operated over this spur it would have been necessary to put in heavy rails, strengthen the culverts and realign the track. Owing to the steep grade only four cars could be hauled at a time, and it required from three to six times as long to do the same amount of transportation work as at the Gallitzin mine.

3. The plaintiff insists that these facts demonstrate that the payments to the Altoona and other companies were not measured by the value of the track or locomotive, or by the cost of the service rendered, but were unreasonable in amount, were arbitrarily fixed, lowered or withdrawn and constituted a mere cover for rebating. On the other hand, the defendant insisted that, though bound to haul the cars to and from the mines, it could not economically do the work on account of the physical conditions at the Altoona, Millwood and Glen White mines and that it, therefore, employed those companies to perform that transportation service, paying them therefor an allowance

which is *prima facie* reasonable and must be so treated by the courts until the Commission has determined that it was excessive or constituted an unjust discrimination.

On this hearing, involving a matter of jurisdiction, we cannot pass upon these questions which go to the merits of the controversy. But these claims of the parties emphasize the fact that there are two classes of acts which may form the basis of a suit for damages. In one the legal quality of the practice complained of may not be definitely fixed by the statute so that an allowance, otherwise permissible, is lawful or unlawful, according as it is reasonable or unreasonable. But to determine that question involves a consideration and comparison of many and various facts and calls for the exercise of the discretion of the rate-regulating tribunal. The courts have not been given jurisdiction to fix rates or practices in direct proceedings, nor can they do so collaterally during the progress of a lawsuit when the action is based on the claim that unreasonable allowances have been paid. If the decision of such questions was committed to different courts with different juries the results would not only vary in degree, but might often be opposite in character—to the destruction of the uniformity in rate and practice which was the cardinal object of the statute.

4. The necessity under the statute of having such questions settled by a single tribunal in order to secure singleness of practice and uniformity of rate has been pointed out and settled in the *Abilene*, *Pitcairn* and *Robinson Cases* and is referred to here because this record and that in *Pennsylvania R. R. v. International Co.*, ante, p. 184, just decided, furnish a striking illustration of the results which would follow if the reasonableness of an allowance could be decided by different tribunals. Both cases involve the payment of 18 cents a ton to the Altoona Company during the same period and for identically the same reasons. In both the plaintiff insisted that the payment

was a rebate, and the carrier that it was compensation for services rendered. In the *International Case* the judge treated the Altoona allowance as lawful and reasonable. In this case the Referee found that it was a rebate, while the trial judge, in passing on exceptions to the report, held that it was a question of fact about which the evidence was conflicting and thereupon approved the Referee's report. Treating it as a question of fact, there may have been sufficient testimony to sustain the finding in both instances, although the conclusion was diametrically opposite. And, applying the rule that appellate courts will not disturb findings of fact where the evidence is conflicting, contradictory judgments might have been affirmed and one plaintiff could have been awarded damages on the theory that the Altoona allowance was unlawful and the other been mulcted in cost because the Altoona allowance was legal. This and like considerations compelled the holding that, as the courts have no primary jurisdiction to fix rates, neither can they do so at the suit of a single plaintiff who claims to have been damaged because an allowance paid its competitors was unreasonable in amount.

It is argued that this conclusion ignores §§ 9 and 22, which give the shipper the option of suing in the courts or applying to the Commission. The same argument was made and answered in the *Abilene Case* by showing that to permit suits based on the charge that a particular practice was unreasonable, without previous action by the Commission, would repeal the many provisions of the statute requiring uniformity and equality. For, manifestly, such uniformity and equality cannot be secured by separate suits before separate tribunals involving the reasonableness of a rate or practice. The evidence might vary and, of course, the verdicts would vary, with the result that one shipper would succeed before one jury and another fail before a different jury, where the reason-

ableness of the same practice was involved. Manifestly, different verdicts would occasion inequality between the two shippers and it is equally manifest that if the Commission had made one order of which both could avail themselves, there would have been one finding, of which one, two or a score of shippers could equally avail themselves. The claim that this conclusion nullifies § 9 is concretely answered by the fact that the court has just decided to the contrary in *Pennsylvania R. R. v. International Coal Company*. There the carrier insisted that a suit for damages, occasioned by rebating, could not be maintained without preliminary action by the Commission. This contention was overruled, and it was held that, for doing an act prohibited by the statute, the injured party might sue the carrier without previous action by the Commission, because the courts could apply the law prohibiting a departure from the tariff to the facts of the case. But where the suit is based upon unreasonable charges or unreasonable practices there is no law fixing what is unreasonable and therefore prohibited. In such cases the whole scope of the statute shows that it was intended that the Commission and not the courts should pass upon that administrative question. When such order is made it is as though the law for that particular practice had been fixed, and the courts could then apply that order, not to one case, but to every case,—thereby giving every shipper equal rights and preserving uniformity of practice. Section 9 gives the plaintiff the option of going before the Commission or the courts for damages occasioned by a violation of the statute. But since the Commission is charged with the duty of determining whether the practice was so unreasonable as to be a violation of the law, the plaintiff must, as a condition to his right to succeed, produce an order from the Commission that the practice or the rate was thus unreasonable and therefore illegal and prohibited.

5. It is argued that under the *Abilene, Robinson* and *Pitcairn Cases* this may be true as to existing rates in which the public have an interest, but it is urged that a claim based upon the unreasonableness of past rates and discontinued practices raises a judicial question, of which the courts and not the Commission have jurisdiction.

There are several answers to this proposition. In the first place, the plaintiff cannot claim under the act and against it. To say the least, it is extremely doubtful whether, at common law, one shipper had a cause of action because the carrier paid another shipper more than the market value of transportation services rendered to the carrier. *I. C. C. v. B. & O. R. R.*, 145 U. S. 263, 275. But if any such right existed it was abrogated or forbidden by the Commerce Act, and one was given which, as a condition of the right to recover, required a finding by the Commission that the allowance was unreasonable and operated as an unjust discrimination or as an undue preference. *Texas &c. Ry. v. Cisco Oil Mill*, 204 U. S. 449; *Texas &c. Ry. v. Abilene Co.* 204, U. S. 426, 444; *Southern Ry. v. Tift*, 206 U. S. 428, 437; *United States v. Pacific & Arctic R. R.*, 228 U. S. 87. Such orders, so far as they are administrative are conclusive, whether they relate to past or present rates, and can be given general and uniform operation, since all shippers, who have been or may be affected by the rate, can take advantage of the ruling and avail themselves of the reparation order. They are quasi-judicial and only *prima facie* correct in so far as they determine the fact and amount of damage—as to which, since it involves the payment of money and taking of property, the carrier is by § 16 of the act given its day in court and the right to a judicial hearing (March 2, 1889, 25 Stat. 855, 859, c. 382).

In considering the administrative questions as to reasonableness, the elements of the problem are the

same, whether they involve the validity of obsolete allowances, discarded tariffs, or current rates and practices. In both classes of cases there is a call for the exercise of the rate-regulating discretion and the same necessity for having the matter settled by a single tribunal. For if at the suit of one shipper, a court could hold a past rate or allowance to have been unreasonable and award damages accordingly, it is manifest that such shipper would secure a belated but undue preference over others who had not sued and could not avail themselves of the verdict. But more than this—to permit separate suits and separate findings would not only destroy the equality which the statute intended should be permanent, even after the rates had been changed, but it would bring about direct conflict in the administration of the law. Under the statute the carrier has the primary right to fix rates, and so long as they are acquiesced in by the Commission the carrier and shippers are alike bound to treat them as lawful. After the rate had been abandoned the carrier is still obliged to treat it as having been lawful, and cannot refund what had been collected under it until the Commission determines that what was apparently reasonable had in fact been unreasonable. But such a determination cannot be made by the courts, for they would not only have first to exercise an administrative function and make a rate by which to measure the reasonableness of the charge collected, but they would have to go further and treat as unreasonable a rate, past or present, which the statute had declared should be deemed lawful until it had been held to be otherwise by the Commission.

As to past and present practices for allowances, the Commission has the same power and there is the same necessity to take preliminary action. This was recognized in *Texas &c. Ry. v. Abilene Co.*, 204 U. S. 426, where, after considering §§ 8 and 22, relating to jurisdiction and the statutory and common law remedy, it was said that

although a railroad might alter its rates voluntarily or in obedience to an order of the Commission, yet it can "not be doubted that the power of the Commission would nevertheless extend to hearing legal complaints of and awarding reparation to individuals for wrongs unlawfully suffered from the application of the unreasonable schedule during the period when such schedule was in force." A contrary ruling would upset a useful, time-saving, economical and established practice. For in accordance with this construction of the act the Commission, after the abandonment of a rate, has repeatedly received and heard complaints and, upon finding that it had been unreasonable, has granted reparation accordingly. See *Arkansas Fuel Co. v. C., M. & St. P. Ry. Co.*, 16 I. C. C. 95, 98; *Allen & Co. v. C., M. & St. P. Ry. Co.*, 16 I. C. C. 293, 295.

The plaintiff insists, however, that all these reasons are answered by the decision in *Wight v. United States*, 167 U. S. 512, where the court, without preliminary action by the Commission, held that an allowance paid a consignee for hauling his freight in wagons from depot to warehouse was a rebate and thereupon inflicted the statutory punishment.

But that case did not involve any question of reasonableness of rate or allowance. Nor was the court there called on to indirectly exercise rate-regulating power, but only to pass upon the question of fact as to whether, as charged in the indictment, the defendant had paid a secret rebate to a favored consignee. It appeared that the carrier's published rate of 15 cents included the haul from Cincinnati to the yard in Pittsburg. Neither by its terms, nor by general practice, did that rate include delivery at warehouses in the city and distant from the railroad tracks. Not having undertaken to furnish free cartage, it was unlawful for the carrier to perform that service for one patron and not for all others. Paying the

avored consignee for rendering a service the carrier was not bound to furnish, was a gift—a rebate—a thing *ipso facto* illegal and prohibited by the statute and for which the guilty carrier was subject to criminal indictment, and for which damages could have been awarded on the civil side of the court. It was therefore not necessary to have a preliminary ruling by the Commission because the statute itself prohibited the payment of rebates and the courts could apply the law accordingly.

6. The plaintiff thereupon insists that even on this view of the case the judgment should be reversed, claiming that the payments here were of that prohibited character, so that even if the allowance was reasonable in amount, its payment was nevertheless unlawful because (a) given for a service not included in the rate and (b) not mentioned in the tariff.

Under the Elkins Act of February 19, 1903, 32 Stat. 847, c. 708 (*United States v. Chicago & A. Ry.*, 148 Fed. Rep. 646; *S. C.*, 156 Fed. Rep. 558, affirmed by a divided court, 212 U. S. 563), and under the Hepburn Act of June 29, 1906, 34 Stat. 584, c. 3591 (*Victor Co. v. Atchison Ry.*, 14 I. C. C. 120) it has been held that the carrier must give notice in the tariff of free cartage, lighterage, ferriage, or any other accessorial service that will be furnished, as well as of any allowance that will be made to shippers who furnish transportation facilities or service. But the present case is not to be governed by those statutes, but by the law of force between 1897 and 1901, when the transactions complained of took place. At that time the Commerce Act¹ required the carrier to give notice of

¹ SEC. 6. . . . The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force . . . , and shall also state separately the terminal charges and any rules or regulations which in

every charge it would make against the shipper. But the statute was not construed to compel the railroad to publish what free cartage or accessorial service it would furnish (*Detroit v. United States*, 167 U. S. 646), nor what sums it would pay shippers for transportation service rendered by them to the carrier. Failure to publish these items could, however, easily lead to unjust discrimination, and the court, in the case last cited, held that the Commission might, by a general order, require such matters to be published in the rate sheet. We are not cited to any such order for the period now under investigation, and, so far as we can discover, by the general and public custom of all carriers, acquiesced in by the Commission, the tariffs at that time uniformly omitted any statement of allowances that would be paid to the shipper for the use of private cars, or private tracks, or for transportation service in switching, hauling, lightering or other work, included in the rate, but actually performed by the shipper.

But although the statute then of force was not construed to require the publication of allowances, their pay-

anywise change, affect, or determine any part or the aggregate of such aforesaid rates and fares and charges. . . .

And when any such common carrier shall have established and published its rates, fares, and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedule of rates, fares, and charges as may at the time be in force.

Every common carrier subject to the provisions of this act shall file with the Commission hereinafter provided for copies of its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same. Every such common carrier shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party." (Act of February 4, 1887, 24 Stat. 379, 380, 381.)

ment was lawful only when supported by a consideration. To pay shippers for doing their own work would have been a mere gratuity, and if here the carrier was not bound to haul from the mine it had no more right to pay these companies for bringing their coal over the spur track to the junction than it would have had to pay a merchant for hauling his goods in a wagon to the railroad depot. The plaintiff insists that such is the case here, and that, as the tariff named the rate from the station, it could not lawfully include the haul from the mine, and consequently paying the shippers for doing their own hauling was a mere rebate.

Such undoubtedly it would have been if naming the rate from station to destination meant that the haul had to begin at the depot building. But neither the statute nor the tariff defines what are station limits, nor do they fix the exact point from which the transportation must begin, nor the territory within which the delivery must be made. These limits necessarily vary with the size of the communities, the extent of the yards, the practice of the carrier and the bounds within which it uniformly receives and delivers freight. This is particularly true in a case like the present, where the Clearfield District was treated as a single shipping point, and where the rate, though named and published as from the station, was universally applied from the mines of the Mitchell Company as well as the other companies named in the declaration and all others located in the Clearfield District.

Inasmuch as this rate included the haul the Railroad was bound to transport the coal from the mouth of the mines, and could use its own engines for that purpose or it could employ the Coal Companies to render that service, paying them proper compensation therefor. In case any question arose as to the reasonableness of the practice, the limits within which the station rates should

apply, or the reasonableness of the allowance paid those shippers who supplied motive power, the Commission alone could act. For the courts are no more authorized to determine the reasonableness of an allowance for a haul over a spur track, between mine and station, than they are to pass upon the reasonableness of a rate for a haul, over a trunk line, between station and station. What is or was a proper allowance is not a matter of law until after it has been fixed by the rate-regulating body. The courts can then apply that law, and, measuring what has been charged by what the Commission declares should have been charged, can award damages to the extent of the injuries occasioned by the payment of the allowance found to have been unreasonable and unlawful.

That station rates may be applied from mill or mine reached by spur tracks is recognized by the ruling of the Commission in the *Tap Line Cases*, 23 I. C. C. 277, where, in dealing with the practice of paying an allowance for hauling lumber from sawmills, the Commission said (p. 293):

"In all cases it is apparently the practice of the trunk lines, where no allowance is made, to set the empty car at the mill and to receive the loaded car at the same point. Indeed, they do this in many cases even when an allowance is made to the tap line. But whenever this service is performed by the trunk line, it is included in the lumber rate and is done without additional charge. In some instances the switch or spur track connecting the mill with the trunk line is as much as three miles long. In other words, by their common practice the public carriers interpret the lumber rate as applying from mills in this territory apparently as far as three miles from their own lines. So far as the manufactured lumber is concerned, it may therefore be said that where a mill has a physical connection with a trunk line and is not more than three miles distant the transportation offered by the trunk line

commences at the mill. If, therefore, a lumber company, having a mill within that distance of a trunk line, undertakes, by arrangement with the trunk line, to use its own power to set the empty car at the mill and to deliver it when loaded to the trunk line it is doing for itself what the trunk line, under its tariffs, offers to do under the rate. In such a case the lumber company may therefore fairly be said to furnish a facility of transportation for which it may reasonably be compensated under section 15 whether its tap line is incorporated or unincorporated. In other words, the lumber company thus does for itself what the trunk line does with its own power at other mills without additional charge and what it must therefore do for the particular lumber company without additional charge. Under such circumstances we think the lumber company, under section 15, may have reasonable compensation when it relieves the trunk line of the duty. But an allowance under such circumstances is lawful only when the trunk line prefers, for reasons of its own and without discrimination, to have the lumber company perform the service. It is not lawful when the lumber company refuses to permit the trunk line to do the work." 23 I. C. C. Rep. 277.

In view of this ruling it is apparent that lateral allowances might have been lawfully paid. They became unlawful only when unreasonable. Whether they were so or not was a rate-making question as to which parties were directly at issue, and which the courts had no jurisdiction to determine so far as it concerned the allowances to the Altoona, Millwood and Glen White mines. Having no jurisdiction, the parties could not by consent give it to the court, to the judge, nor to the Referee. And if, as claimed, the stipulation to submit the case to the Referee estops the defendant from insisting on the plea of the statute of limitations, that, with all other relevant issues, can then be determined, if the Commission decides that

the allowance was unlawful, and the carrier has no other defense.

7. But the situation of the Bolivar and Latrobe Companies was very different from that at the Altoona, Glen White and Millwood mines, and a different conclusion must, therefore, follow. The Latrobe and Bolivar Companies' mines were located in the Latrobe District, where the rates to eastern points were about 20 cents higher than from the Clearfield District, except that for a part of the time they were the same, though the shipments were then small by comparison with those from the Clearfield District. During that period the plaintiff shipped in competition with the Latrobe and Bolivar Companies. These companies owned no engines, and they hauled no cars between mine and station. That work was included in the rate, and the Pennsylvania did the hauling with its own locomotives and crews. It therefore owed nothing to the Latrobe and Bolivar Companies for the service which the carrier itself performed, and the so-called allowance, regardless of the amount, was a mere gift—a rebate, absolutely forbidden by the statute and *ipso facto* illegal. Being an act prohibited by law, it was not necessary to have any preliminary decision to that effect by the Commission, but the courts could, as in any other case, apply the law to the facts proven and award damages to the person injured. The decision just rendered in *International Coal Company v. Pennsylvania Railroad* makes it unnecessary further to discuss this branch of the case. For the court undoubtedly had jurisdiction to proceed with this branch of the case.

The judgment, therefore, must be reversed in so far as the action is based upon payments to the Latrobe and Bolivar Companies, and affirmed in so far as based upon payments to the Altoona, Glen White and Millwood Companies. But owing to the peculiar facts of this case, the unsettled state of the law at the time the

suit was begun and the failure of the defendant to make the jurisdictional point *in limine* so that the plaintiff could then have presented its claim to the Commission and obtained an order as to the reasonableness of the practice or allowance,—direction is given that the dismissal be stayed so as to give the plaintiff a reasonable opportunity within which to apply to the Commission for a ruling as to the reasonableness of the practice and the allowance involved; and, if in favor of the plaintiff, with the right to proceed with the trial of the cause in the District Court, in which the defendant shall have the right to be heard on its plea of the statute of limitations as of the time the suit was filed and any other defense which it may have.

Affirmed and modified in part, and in part reversed.

MR. JUSTICE PITNEY, dissenting in this case and also in *Morrisdale Coal Company v. Pennsylvania Railroad Company*, *post*, p. 304.

Since the result reached by the court in these cases has the effect of virtually eliminating the option conferred by § 9 of the Interstate Commerce Act upon shippers aggrieved by unjust discriminations practiced by common carriers in violation of §§ 2 and 3—the option to “either make complaint to the Commission” or to “bring suit for the recovery of the damages”—and of conferring upon the carrier, in some cases at least, the choice of two lines of procedure, by selecting the character of the defense to be interposed; and since in this and in other respects aggrieved shippers are to be deprived, in very large measure, of the right of redress by private action at law conferred by §§ 8 and 9 for violations of §§ 2 and 3, I deem it my duty to express, somewhat at length, the grounds of my dissent.

The case of the *Mitchell Coal and Coke Company* (No.

674) presents the question whether an action for a violation of § 2 of the Act, based upon the ground of a discrimination accomplished by means of secret rebates to competitors of the plaintiff, where the defense is that the rebates were paid (under the name of "trackage or lateral allowances"), as compensation for services rendered by the shipper in aid of the carrier, can be maintained without a prior application to the Interstate Commerce Commission and a determination by that body as to whether the alleged "trackage or lateral allowances" were reasonable and proper. This case arose in the years 1897 to 1901. The action was commenced in 1905.

The case of the *Morrisdale Coal Company* (No. 207) raises the question whether an action can be maintained for a violation of § 3 of the Act in respect of unfair discrimination in car distribution, without previous action by the Commission upon the question of the reasonableness of the treatment accorded by the carrier to the complaining shipper, or the propriety of the method of car distribution that was pursued. The cause of action accrued during the years 1902 to 1905, inclusive. Suit was commenced in 1908.

These questions are answered in the negative, upon the authority of *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*, 204 U. S. 426; *Balt. & Ohio R. Co. v. Pitcairn Coal Co.*, 215 U. S. 481, 495; and *Robinson v. Balt. & Ohio R. Co.*, 222 U. S. 506. I do not at all question the authority of these cases, or the propriety of the grounds upon which they were decided. But it seems to me that the *Pitcairn Case*, as well as the case of *Interstate Commerce Commission v. Illinois Central R. Co.*, 215 U. S. 452, has no direct bearing upon the questions now presented; and that the authority of the *Abilene Cotton Oil Co. Case* and the case of *Robinson v. Balt. & Ohio R. Co.*, and the reasoning of the court therein, are directly opposed to the result reached in the present cases.

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The *Abilene Case* held that a carrier who *observed* the established and published schedules of rates *without preference or discrimination* could not be held liable to an action at law to recover for alleged excessive charges when the freights charged were those prescribed by the schedule; and that although § 22 of the Act declared that "nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies," this saving clause must necessarily be limited so as to exclude an action based upon common-law principles, when such action would run counter to the very means prescribed by § 6 of the same Act for producing uniformity and preventing discriminations.

And in the *Robinson Case* it was held, upon like reasoning, that a differential in rate between coal loaded into cars from wagons and coal loaded from a tipple, embodied in the filed and published schedules, could not be deemed unjustly discriminatory in an action at law, because the Act forbade any deviation from such published schedules while they remained in effect.

In both those cases *the carriers had strictly observed the filed and published tariffs*, and were for this reason held exempt from action upon what would have been their common-law liability if an unqualified meaning had been attributed to the language of § 22.

The present case is the very opposite of these, and the like reasoning should, I think, lead to the opposite result. For in the *Mitchell Company Case* the carrier, *instead of observing the published schedules, itself departed from them*. And the alleged "trackage and lateral allowances" had no sanction of filing or publishing, nor of any order made by the Interstate Commerce Commission. And in the *Morrisdale Company Case*, the car distribution scheme pursued by the defendant *had not been sanctioned* by the Commission.

Moreover, both of the present cases relate to past transactions exclusively. And for this reason are not at all within the doctrine of the *Pitcairn Case*, which related wholly to matters *in futuro*.

If the discriminations attributed to "trackage and lateral allowances" in the *Mitchell Case*, had received any previous sanction such as by § 6 of the Act is given to the filed and published schedules of rates, or if in the *Morrisdale Case* the method of car distribution had been established or approved by an order of the Commission made in the exercise of its administrative powers conferred by the Act, I should agree that the reasoning and authority of the *Abilene* and *Robinson* and *Illinois Central Cases* would control. If either of the cases at bar had to do with the control of rates or of practices in the future, it would seem to me that the authority and reasoning of the *Pitcairn Case* would control.

But to my mind, it seems a misapplication of the *Abilene*, *Robinson* and *Pitcairn Cases*, as well as a complete perversion of the act of Congress, to say that, respecting transactions in the past, which are by lapse of time put beyond the cognizance of an administrative body that normally deals only with matters *in futuro*, and respecting which the Commission has *not* acted, there shall be no right of action in the courts without previous application to such administrative body.

With great respect, it seems to me that the opinions in both the present cases err in confusing legislative and administrative functions, on the one hand, with judicial functions, on the other. Thus, in the *Mitchell Case*, after reciting the insistence of the plaintiff that the alleged "trackage and lateral allowances" were arbitrarily fixed, and constituted a mere cover for rebating, and the contention of the defendant, on the other hand, that the allowances were made *bona fide* for services actually performed by the shipper in aid of the carrier, and that they were

prima facie reasonable, and must be so treated by the courts until the Commission had determined otherwise, the opinion proceeds as follows: "These claims of the parties emphasize the fact that there are two classes of acts which may form the basis of a suit for damages. In one the legal quality of the practice complained of may not be definitely fixed by the statute, so that an allowance, otherwise permissible, is lawful or unlawful, according as it is reasonable or unreasonable. But to determine that question involves a consideration and comparison of many and various facts, and calls for the exercise of the discretion of the rate-regulating tribunal. The courts have not been given jurisdiction to fix rates or practices in direct proceedings, nor can they do so collaterally during the progress of a lawsuit when the action is based on the claim that unreasonable allowances have been paid. If the decision of such questions were committed to different courts, with different juries, the results would not only vary in degree, but might often be opposite in character—to the destruction of the uniformity in rate and practice which was the cardinal object of the statute."

This is the theory upon which both opinions proceed, the language employed in the *Mitchell Company Case* being: "The courts have no primary jurisdiction to fix rates."—"In considering the administrative question as to reasonableness, the elements of the problem are the same, whether they involve the validity of obsolete allowances, discarded tariffs, or current rates and practices."—"As to past and present practices or allowances, the Commission has the same power, and there is the same necessity to take preliminary action."

And in the opinion in the *Morrisdale Company Case* (No. 207), referring to the different views that have been expressed upon the question of car distribution, the opinion proceeds: "These rulings as to the validity of a particular practice, and the facts that would warrant a de-

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parture from a proper rule actually enforced, are sufficient to show that the question as to the reasonableness of a rule of car distribution is administrative in its character, and calls for the exercise of the powers and discretion conferred by Congress upon the Commission,"—citing the *Pitcairn Case*, 215 U. S. 481, and the *Illinois Central Case*, 215 U. S. 452.

It is of course sufficiently obvious that where a legislative or administrative body is called upon to inquire with respect to the reasonableness of existing rates and practices and the propriety of sanctioning these or establishing others *for the future*, it is called upon to make somewhat the same kind of investigation of facts, conditions, and circumstances that a court and a jury, or a referee must make when adjudicating upon the lawfulness and reasonableness of practices *in the past* respecting which redress is sought by a suitor. Nevertheless, the function performed in the one case is legislative or administrative, as the case may be, and in the other case judicial.

Courts and juries, and referees, time out of mind, have been called upon to investigate the reasonableness of the past practices of common carriers. They did it long before commissions and other administrative boards were devised, and when legislation for the future rested wholly in Parliament, and Congress, and state legislatures.

It seems to me erroneous to conclude that, because the things that a court must do in order to pass judgment upon a past transaction respecting the rates or practices of a carrier are *like* the things that a commission or a committee, or other administrative or legislative body must do in order to perform their proper functions respecting present management and future regulation, therefore all investigations into the past practices or rates of a carrier are administrative or legislative.

Legislation consists in laying down laws or rules for

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the future. Administration has to do with the carrying of those laws into effect—their practical application to current affairs by way of management and oversight, including investigation, regulation and control, in accordance with, and in execution of, the principles prescribed by the law maker. The judicial function is confined to injunctions, etc., preventing wrongs for the future, and judgments giving redress for those of the past.

The Interstate Commerce Act, as I look upon it, clearly recognizes these distinctions.

In the Act as originally passed and under which these cases arose (February 4, 1887, 24 Stat. 379, c. 104) the duties of the company and the prohibitions of discrimination in rates and otherwise are prescribed, and *the Commission is established for the purpose, I submit, primarily of seeing that those duties are observed in the future.* See the proviso of § 4, permitting the Commission to relieve the carrier from the operation of the long and short haul clause; and the requirement in § 6 that copies of the schedules of rates, fares and charges established and published in compliance with the same section shall be filed with the Commission, and notice given to it of all changes made in the same; that all traffic agreements or arrangements with other common carriers shall be likewise filed; that joint tariffs on through rates shall be filed, and these “shall be made public by such common carriers when directed by said Commission in so far as may, in the judgment of the Commission, be deemed practicable; and said Commission shall from time to time prescribe the measure of publicity which shall be given to such rates,” etc. And for a refusal by the carrier to file or publish schedules the carrier shall be subject to a writ of mandamus at the relation of the Commissioners, and the Commissioners as complainant may apply for an injunction.

But then comes § 8, declaring the common carrier to be liable to the person injured for the full amount of damages

sustained in consequence of any violation of the Act, with a counsel fee to be fixed *by the court*.

The next section has been so completely overlooked that it may be well to quote it:

"SEC. 9. That any person or persons claiming to be damaged by any common carrier subject to the provisions of this act *may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act, in any district or circuit court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure hereinafter provided for he or they will adopt. In any such action brought for the recovery of damages the court before which the same shall be pending may compel any director, etc., to attend, appear, give testimony, etc., and may compel the production of the books and papers of such corporation,*" etc. No similar compulsory powers are given to the Commission.

Sec. 11 authorizes the appointment of the Interstate Commerce Commission and prescribes the qualifications.

Sec. 12 prescribes the general duties of the Commission, and remains for the most part unaltered by subsequent amendments. Unimportant amendments were made by the act of March 2, 1889, 25 Stat. 855, c. 382, and a somewhat more important one respecting the production of evidence, and the use of testimony taken under depositions elsewhere, was made by the act of February 10, 1891, 26 Stat. 743, c. 128. But an examination of § 12 is convincing of the purpose of Congress to establish the Commission as *an administrative body*, the language being that it "shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this Act, and shall keep itself informed as

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to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created;" and (amendment of 1899), "*the Commission is hereby authorized and required to execute and enforce the provisions of this Act,*" etc. The remaining provisions of this section relate entirely to the machinery by which these duties are to be performed.

Sec. 13 provides for complaints or charges to be made by any person, association, municipal organization, etc., respecting anything done or omitted to be done, by a common carrier in contravention of the provisions of the Act; that a statement of the charges "shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Commission. If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant *only for the particular violation of law thus complained of*. If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to *investigate the matters complained of* in such manner and by such means as it shall deem proper," etc.

By § 14, "Whenever an investigation shall be made by said Commission, it shall be its duty to make a *report in writing in respect thereto*, which shall include the *findings of fact upon which the conclusions of the Commission are based*, together with its *recommendation* as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and such findings so made shall thereafter, in all

judicial proceedings, be deemed *prima facie* evidence as to each and every fact found."

By § 15 it is made the duty of the Commission to deliver a copy of its report to the common carrier, with a notice to *cease and desist from the violation of the law, or to make reparation for the injury found to have been done, or both, within a reasonable time*; and if the carrier does so, "a statement to that effect shall be entered of record by the Commission, and the said common carrier shall thereupon be *relieved from further liability or penalty for such particular violation of the law*."

By § 16, if the carrier violates or refuses to obey a lawful order or requirement of the Commission, the latter is to *apply in a summary way by petition to the United States Circuit Court for an injunction, mandatory or otherwise*. The amendment of this section made by act of March 2, 1889, 25 Stat. 855, 860, c. 382, expressly saves the right of trial by jury in controversies requiring such a trial under the Seventh Amendment. In any such proceeding the findings of the Commission are made *prima facie* evidence of the matters therein stated.

The remaining provisions of the Act are, as it seems to me, all in accord with the general policy indicated by those above cited. The Commission is not primarily, or in any proper sense, a judicial tribunal. It can render no judgment binding upon the parties, can hold no trial by jury, cannot enforce its awards by process against the person or against property; its awards are merely *prima facie* evidence, without any conclusive effect, and must be enforced through the aid of the courts of law. It is an administrative body, a branch of the Executive Department, charged with the duty of aiding in the enforcement of the duties imposed upon the carrier by the Act; and with incidental—and only incidental—authority to award reparation, or, rather, to *recommend* reparation where it happens, in the course of its investigations,

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to learn that some improper practice of the carrier has produced an injury to the shipper that calls for such redress.

The *Mitchell Case* arose in the years 1897 to 1901; the *Morrisdale Case* during the period from March, 1902, to December, 1905, both inclusive. Both actions arose, therefore, prior to the Hepburn Act of June 29, 1906, 34 Stat. 584, c. 3591, and the acts of April 13, 1908, 35 Stat. 60, c. 143, and June 18, 1910, 36 Stat. 539, c. 309.

I do not see, however, that any of the amendments makes any material change in the duties of the carriers, or the remedies for breach of them, or in the functions of the Interstate Commerce Commission, or the mode in which they are to be performed, so far as the question now under consideration is concerned. By those amendments, and by the Elkins Act of February 19, 1903, 32 Stat. 847, c. 708, the original scheme of the Interstate Commerce Act has been elaborated and the powers of the Commission extended, including a grant of the rate-making power, the power to prevent advances in rates, etc. But this only emphasizes that the Commission was established as a body having executive and legislative rather than judicial powers. For the rate-making power is a branch of the legislative.

There is another important distinction, very clearly recognized in the opinion of the court in the *Abilene Cotton Oil Co. Case*, and pretty nearly lost sight of, as it seems to me, in the present decisions; and that is, the distinction between the general rules of conduct prescribed by the Act, and the standards by which obedience to those rules is to be tested. Thus, by § 1, the rates shall not be unreasonable; and by § 2 they shall not be discriminatory. These are the general rules; but the method of enforcing them in the practical operations of the carrier is by the rate sheets prescribed by § 6 and the function committed to the Commission to revise them.

Where the rate sheet has been filed, etc., it of course becomes binding as the particular expression of the general principle. Again, in § 4, there is the general prohibition known as the "long and short haul clause"; but for a particular expression of it, as applicable to the management of a given railroad system, the Commission may act, as the proviso to that section declares. Clearly, until the Commission acts, the general prohibition is unqualified; and, when the Commission has acted, its modification is as much law as the general prohibition was before. And this reasoning, I think, applies to the respective causes of action, now under consideration. Section 2 says— "No unjust discrimination." If and when the rates are duly published, or the Commission has lawfully acted, the schedule or the order furnishes for the time the measure of determining what is an unjust discrimination. But, until the rates are filed or the Commission has acted, it is, like every other case of violation of law, a question for the courts, to be determined according to the terms of the law. And so with § 3, prohibiting undue and unreasonable preferences and advantages to particular shippers, of which, of course, discrimination in car distribution is an instance. When the Commission has lawfully taken action in accordance with its administrative duties, prescribed by the Act, its order or requirement becomes applicable; but until such order or requirement is made, the duty prescribed by § 3 remains unqualified. And if, under either section, the question of reasonableness arises in the course of an action in the courts, it must be determined according to the facts and the law, just as courts determine any and every other question of reasonableness in cases within their cognizance.

In the *Abilene Case* the court recognized that something must be taken from the force and effect of §§ 9 and 22 in order to give full effect to the context and the general scheme of the Act; and therefore it naturally (and, as

I concede, necessarily) held that the right of action conferred by § 9 "must be confined to redress of such wrongs as can, consistently with the context of the Act, be redressed by courts without previous action by the Commission, and therefore does not imply the power in a court to primarily hear complaints concerning wrongs of the character of the one here complained of."

That is to say, complaints against a carrier who had *observed* the established schedule that was made by the Act the conclusive evidence (until modified by the Commission) of what rates should be deemed reasonable in law, could not be entertained by the courts (prior to action by the Commission) upon the theory that although reasonable in law the rates were excessive in fact.

This, however, in plain terms left open the doors of the courts to the suitor seeking pecuniary redress for other violations of the Act, not sanctioned by public schedules or by any other regulation declared obligatory by the Act. And within that category, as I think, are these present actions, brought against a carrier that (as we must assume in order to determine the jurisdictional question) violated the Act, instead of observing it; that so far from adhering to published regulations, or mandate of the Commission, or other order rendered obligatory by the Act, set up its own standard of practices and discriminations, and maintained them in defiance of the right of these plaintiffs to fair and equal treatment.

But the effect of the present decisions, if I apprehend them correctly, is to leave no force whatever remaining to § 9. The *Abilene Case* excluded from its wrongs of the character of the one there complained of; the present decisions excluded from its wrongs of the opposite character. That case exempted from action, the carrier who had consistently *observed* the published schedules; the present (*Mitchell*) case shields the carrier who systematically *departs from* the published schedules; and, by a parity

of reasoning, the decision in the *Morrisdale Case* exempts from primary liability at law the carrier who systematically violates the rule of equality with respect to car distribution.

In the numerous amendments that have been enacted by Congress during the 25 years that the Interstate Commerce Act has been in force, in no instance has any change been made in either of the sections (§§ 2, 3, 8 and 9) that are here important. Nor has any of the changes made in the duties of the Commission operated to deprive the aggrieved shipper of his private action at law. Indeed, in the third section of the Elkins Act of February 19, 1903, 32 Stat. 847, 848, c. 708, Congress,—while authorizing the Commission to apply to the Federal court for an enforcement of the published tariffs, or a discontinuance of discrimination, and authorizing the district attorneys, under the direction of the Attorney General, to institute and prosecute such proceedings,—was careful to declare that—"The proceedings provided for by this Act shall not preclude the bringing of suit for the recovery of damages by any party injured, or any other action provided by said Act approved February fourth, eighteen hundred and eighty-seven, entitled," etc.

But, according to the construction now for the first time adopted, in the majority of instances the right of the aggrieved shipper to resort to the ordinary courts of law for the recovery of his damages is subjected to an onerous condition precedent; or at least it may be so subjected at the option of the carrier; for, in No. 674 (the *Mitchell Coal Co. Case*), the shipper is driven to the Interstate Commerce Commission in respect of part of his claim because of the defense that the carrier interposed; while with respect to the residue of his claim, because the character of the defense was different, the action must proceed at law.

In short, without any legislative repeal of § 9, the op-

tion there conferred upon the shipper has been transferred to the carrier.

How serious is the difference becomes apparent upon a little reflection. The shipper must go first to the Commission. But when he gets before the Commission he may or may not succeed; and if he succeeds he gets no adjudication that is binding upon the carrier, for by the terms of the Act such findings are only *prima facie* correct in so far as they determine the fact and amount of damage. In order to recover them he must still resort to the courts. Thus, the shipper has a chance to *lose* his case before the Commission, but no chance to *win* it there. The ruling of the Commission may conclude the case *against* him, but cannot conclude it *in his favor*.

Now, let us suppose the normal case of a *bona fide* claim, where there is no more probability that the complaining party will succeed than that he will fail. The probability of success before the Commission is represented by the fraction $\frac{1}{2}$. If successful, he must then go to the court, and the finding of the Commission being no more than evidence, and not even shifting the burden of proof, the shipper's probability of success is again represented by the fraction $\frac{1}{2}$. Since he must receive two concurring awards, his probability of ultimate success in both tribunals is represented by $\frac{1}{2} \times \frac{1}{2} = \frac{1}{4}$. In short, instead of having the option that Congress gave him, he is confined to a single line of procedure, contrary to the tenor of the Act, and his probability of success is reduced from "equal chances" down to "one chance out of four."

It is said that the questions that arise about these practices of rebating and car distribution are complicated and difficult. Certainly that objection is not pertinent to the present cases. I see nothing beyond the grasp of a court of law in the *Mitchell Case*. The question that, as this court now holds, must await the determination of the Commission, concerns the allowances

to the Altoona, Milwood, and Glen White Mines; and it is in substance a mere question of fact as to whether anything, and if so how much, ought to be allowed for certain hauling services, and the like; if too much was allowed, the allowance was a cover for rebating; otherwise, not. And the *Morrisdale Case* reduces itself, according to the opinion, to a narrow question of law upon admitted facts. It is the old question whether, during periods of car shortage, when the carrier is unable to furnish all the cars necessary to meet the demands for transportation, shippers having cars privately owned by themselves, or railroads having cars of their own used to transport their fuel, shall, by reason of these "private cars" or "fuel cars," have a greater share in the distribution of the gross facilities for transportation than would be the case if the carrier undertook to supply cars of its own for all shippers. It is a familiar question, that has been several times before the Interstate Commerce Commission, and decided by them as a question of law upon the authority and reasoning of the decisions of the courts of law. *R. R. Com. of Ohio v. Hocking Valley R. R. Co.* 12 I. C. C. 398; *Traer v. Chicago & Alton R. R. Co.*, 13 I. C. C. 451; *Hillsdale Coal Co. & Pa. R. R. Co.*, 19 I. C. C. 356. The order of the Commission in the *Hocking Valley Case*, 12 I. C. C. 398, is the same that was sustained by this court in the *Illinois Central Case*, 215 U. S. 452.

But, conceding everything that may be claimed respecting the inherent difficulty of properly passing upon such cases, they are no more difficult than many others with which courts of law and of equity have to grapple. The Interstate Commerce Commission, so far as it passes any *quasi* judicial judgment upon such matters, does so by the pursuing methods that are modeled upon those of the courts, and which this court has recently held cannot be departed from without rendering the proceedings void. *Int. Com. Com. v. Louisville & Nashville R. R.*, 227 U. S. 88.

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But if all the Federal judges, in all the Federal courts, and the masters and referees who are at their command, are unable as a practical matter to grapple with these questions, what shall be said of the probability that the Interstate Commerce Commission, a single body, with headquarters at Washington, with limited powers, and with enormous labors in the line of its legitimate administrative functions, will be able to properly dispose of the mass of judicial work that is now to be imposed upon it?

It is said that it is necessary to have these matters of rate discriminations and other preferential practices settled by a single tribunal. But is not this a question for Congress? And did not Congress in plain terms confer upon the aggrieved shipper the option of going to the courts rather than to the Commission? And has Congress manifested any intent to repeal the second, third, eighth, and ninth sections of the Act?

The opinion in the *Mitchell Case* recognizes that the orders of the Commission are only "quasi-judicial and only *prima facie* correct in so far as they determine the fact and amount of damage—as to which, since it involves the payment of money and taking of property, the carrier is by § 16 of the Act, given its day in court and the right to a judicial hearing (25 Stat. 859)." But is the shipper not entitled to his day in court and to a judicial hearing? Has the Constitution any greater regard for the right of a carrier to trial by jury than it has for the right of a shipper? Conceding, as I do, that Congress could not, because of the Fifth Amendment, make the finding of an administrative body, acting without jury trial, final as against the carrier, I submit, with great respect, that it gives an unconstitutional meaning to the Act if we construe it as depriving the shipper of his remedy without trial by jury.

It is said that if actions were to be brought in the courts—"to permit separate suits and separate findings would not only destroy the equality which the statute

intended should be permanent, but would bring about direct conflict in the administration of the law." I confess myself unable to understand how giving redress by a private action for the consequences of past maladministration can conflict in any way with the proper administration of the law, which, if I understand the term, applies to the execution of it in the present and for the future. It is unfortunately true that, since courts and juries are human, the result in one case does not always seem to accord with the result in another. This is theoretically true of all suits at law; practically, the successful administration of justice in the courts belies the theory.

The court sees in the Act a purpose to have all matters affecting rates and the regulation of practices that have to do with equality of service on the part of the carrier towards the shippers "settled by a single tribunal." I have no difficulty in finding in the Act a purpose to confer the administrative power, the regulating power, upon a single tribunal, to wit, the Commission. But I find nothing, and the opinions refer to nothing, indicating a purpose that past transgressions of the Act and the cognizance of suits brought for the redress of injuries consequent upon such transgressions shall be determined by a single tribunal. It would seem more probable that Congress considered precise uniformity with respect to administering justice for past offences to be an unattainable dream. I repeat, administration, management, regulation, concern themselves with the present and the future. The awarding of relief for past offences is properly a judicial function. And, as I read the Act, Congress conferred jurisdiction over such offences upon the courts; giving at the same time an option to the shipper to resort if he would to the Commission in the first instance; doubtless on the theory that the simple cases, and those involving small amounts, would go (as experience demonstrates that they have gone) to the Commission, and that thereby that body,

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while enabled to accomplish (by its recommendations and warnings) much in the way of remedying past grievances, would at the same time be put in possession of information from sources that otherwise would hardly be accessible, so that on the basis of that information it could proceed to establish regulations for the future.

Be this as it may, it seems to me highly illogical to say that damages shall not be awarded to a shipper for violations of the law committed by the common carrier in the past, because the shipper would thereby "secure a belated but undue preference." The argument overlooks the fact that, upon the hypothesis that a cause of action exists, it is the carrier who has given a preference to the plaintiff's competitor; it is for the damages resulting from that preference that the action is brought; and, if the action be justly determined, it gives to the aggrieved shipper a belated, but presumably a due, recompense.

That I have not misunderstood the real questions at issue in the *Abilene*, the *Robinson*, the *Illinois Central*, and the *Pitcairn Cases* will, I think, appear from a critical examination of those cases, in aid of which the following extracts and comments are submitted (the italics, in most instances, being my own).

Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co. (1907), 204 U. S. 426, was a review under § 709, Rev. Stat., of a judgment of a Texas state court. The Abilene Cotton Oil Co. sued on common-law principles to recover moneys alleged to have been exacted for freight on cotton seed over and above a just and reasonable charge. There were averments (p. 430) "That the rate exacted was discriminatory, constituted an undue preference, and amounted to charging more for a shorter than for a longer haul." But (p. 432) these averments were eliminated in the course of the trial. The findings, as condensed by the court below, were (p. 432) that it was an interstate shipment, and the rates charged by the railroad company were those

established under the Interstate Commerce Act, and had been duly filed and published; but that they were in fact unreasonable and excessive. This court (by the present Chief Justice, then Mr. Justice White) said (p. 436) that the question presented was:

"The scope and effect of the Act to Regulate Commerce upon the right of a shipper to maintain an action at law against a common carrier to recover damages because of the exaction of an alleged unreasonable rate, although the rate collected and complained of was the rate stated in the schedule filed with the Interstate Commerce Commission and published according to the requirements of the Act to Regulate Commerce, and which it was the duty of the carrier under the law to enforce as against shippers."

After pointing out that the right of recovery sustained by the court below was clearly within the common-law principles stated, and was not in so many words abrogated by the Commerce Act, the court proceeded to inquire whether this common-law right had been impliedly taken away by the Act, and to what extent. The general scope of the Act was then reviewed as follows:

"Let us, without going into detail, give an outline of the general scope of that Act with the object of fixing the rights which it was intended to conserve or create, the wrongs which it proposed to redress, and the remedies which the Act established to accomplish the purposes which the lawmakers had in view.

"The Act made it the duty of carriers subject to its provisions to charge only just and reasonable rates. To that end the duty was imposed of establishing and publishing schedules of such rates. It forbade all unjust preferences and discriminations, *made it unlawful to depart from the rates in the established schedules until the same were changed as authorized by the Act*, and such departure was made an offense punishable by fine or imprisonment, or both, and the prohibitions of the Act and the punishments

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which it imposed were directed not only against carriers but against shippers, or *any person* who, directly or indirectly, by any machination or device in any manner whatsoever, *accomplished the result of producing the wrongful discriminations or preferences which the Act forbade*. It was made the duty of carriers subject to the Act to file with the Interstate Commerce Commission created by that Act copies of established schedules, and power was conferred upon that body to provide as to the form of the schedules and penalties were imposed for not establishing and filing the required schedules. *The Commission was endowed with plenary administrative power to supervise the conduct of carriers, to investigate their affairs, their accounts and their methods of dealing, and generally to enforce the provisions of the Act*. To that end it was made the duty of the District Attorneys of the United States, under the direction of the Attorney General, to prosecute proceedings commenced by the Commission to enforce compliance with the Act. The Act specially provided that whenever any common carrier subject to its provisions 'shall do, cause to be done, or permit to be done any act, matter or thing in this Act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this Act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this Act. . . . ' *Power was conferred upon the Commission to hear complaints concerning violations of the Act, to investigate the same, and, if the complaints were well founded, to direct not only the making of reparation to the injured persons, but to order the carrier to desist from such violation in the future*. In the event of the failure of a carrier to obey the order of the Commission that body, or the party in whose favor an award of reparation was made, was empowered to *compel compliance by invoking the authority of the courts of the*

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United States in the manner pointed out in the statute, *prima facie* effect in such courts being given to the findings of fact made by the Commission. By the ninth section of the Act it was provided as follows:

"That any person or persons claiming to be damaged by any common carrier subject to the provisions of this Act may either make complaint to the Commission, as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this Act, in any District or Circuit Court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. . . ."

"And by section 22, which we shall hereafter fully consider, existing appropriate common-law and statutory remedies were saved.

"When the Act to Regulate Commerce was enacted there was contrariety of opinion whether, when a rate charged by a carrier was in and of itself reasonable, the person from whom such a charge was exacted had at common-law an action against the carrier because of damage asserted to have been suffered by a discrimination against such person or a preference given by the carrier to another. (*Parsons v. Chicago & Northwestern Ry.*, 167 U. S. 447, 455; *Interstate Commerce Commission v. Baltimore & Ohio R. R.*, 145 U. S. 263, 275.) That the Act to Regulate Commerce was intended to afford an effective means for redressing the wrongs resulting from unjust discrimination and undue preference is undoubted. Indeed, it is not open to controversy that to provide for these subjects was among the principal purposes of the Act. (*Interstate Commerce Commission v. Cincinnati, New Orleans & Texas Pacific Ry. Co.*, 167 U. S. 479, 494.) And it is apparent that *the means by which these great purposes*

were to be accomplished was the placing upon all carriers the positive duty to establish schedules of reasonable rates which should have a uniform application to all and which should not be departed from so long as the established schedule remained unaltered in the manner provided by law. (*Cincinnati, New Orleans & Texas Pacific Ry. Co. v. Interstate Commerce Commission*, 162 U. S. 184; *Interstate Commerce Commission v. Cincinnati, New Orleans & Texas Pacific Ry. Co.*, 167 *Ib.* 479.)

"When the general scope of the Act is enlightened by the considerations just stated it becomes manifest that there is not only a relation, but an indissoluble unity between the provision for the establishment and maintenance of rates until corrected in accordance with the statute and the prohibitions against preferences and discrimination. This follows, because unless the requirement of a uniform standard of rates be complied with it would result that violations of the statute as to preferences and discrimination would inevitably follow. This is clearly so, for if it be that the standard of rates fixed in the mode provided by the statute could be treated on the complaint of a shipper by a court and jury as unreasonable, *without reference to prior action by the Commission*, finding the established rate to be unreasonable and ordering the carrier to desist in the future from violating the Act, it would come to pass that a shipper might obtain relief upon the basis that the established rate was unreasonable, in the opinion of a court and jury, and thus such shipper would receive a preference or discrimination not enjoyed by those against whom the schedule of rates was continued to be enforced. This can only be met by the suggestion that the judgment of a court, when based upon a complaint made by a shipper without previous action by the Commission, would give rise to a change of the schedule rate and thus cause the new rate resulting from the action of the court to be applicable in future as to all. This suggestion, however,

is manifestly without merit, and only serves to illustrate the absolute destruction of the Act and the remedial provisions which it created which would arise from a recognition of the right asserted. For if, without previous action by the Commission, power might be exerted by courts and juries generally *to determine the reasonableness of an established rate*, it would follow that unless all courts reached an identical conclusion *a uniform standard of rates in the future* would be impossible, as the standard would fluctuate and vary, dependent upon the divergent conclusions reached as to reasonableness by the various courts called upon to consider the subject as an original question. Indeed the recognition of such a right is *wholly inconsistent with the administrative power conferred upon the Commission* and with the duty, which the statute casts upon that body, of seeing to it that the statutory requirement as to uniformity and equality of rates is observed. Equally obvious is it that the existence of such a power in the courts, independent of prior action by the Commission, would lead to favoritism, to the enforcement of one rate in one jurisdiction and a different one in another, would destroy the prohibitions against preferences and discrimination, and afford, moreover, a ready means by which, through collusive proceedings, the wrongs which the statute was intended to remedy could be successfully inflicted. Indeed no reason can be perceived for the enactment of the provision endowing the administrative tribunal, which the Act created, with power, on due proof, not only to award reparation to a particular shipper, but to *command the carrier to desist from violation of the Act in the future*, thus compelling the alteration of the old or the filing of a new schedule, conformably to the action of the Commission, if the power was left in courts to grant relief on complaint of any shipper, upon the theory that the established rate could be disregarded and be treated as unreasonable, without reference to previous action by the

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Commission in the premises. This must be, because, if the power existed in both courts and the Commission to originally hear complaints on this subject, there might be a divergence between the action of the Commission and the decision of a court. In other words, the established schedule might be found reasonable by the Commission in the first instance and unreasonable by a court acting originally, and thus a conflict would arise which would render the enforcement of the Act impossible.

"Nor is there merit in the contention that section 9 of the Act compels to the conclusion that it was the purpose of Congress to confer power upon courts primarily to relieve from the duty of enforcing the established rate by finding that the same as to a particular person or corporation was so unreasonable as to justify an award of damages. True it is that the general terms of the section when taken alone might sanction such a conclusion, but when the provision of that section is read in connection with the context of the Act and in the light of the considerations which we have enumerated, we think the broad construction contended for is not admissible. And this becomes particularly cogent when it is observed that the power of the courts to award damages to those claiming to have been injured, as provided in the section, contemplates only a decree in favor of the individual complainant, redressing the particular wrong asserted to have been done, and does not embrace the power to direct the carrier to abstain in the future from similar violations of the Act; in other words, to command a correction of the established schedules, which power, as we have shown, is conferred by the Act upon the Commission in express terms. In other words, we think that it inevitably follows from the context of the Act that *the independent right of an individual originally to maintain actions in courts to obtain pecuniary redress for violations of the Act conferred by the ninth section must be confined to redress of such wrongs as can, con-*

sistently with the context of the Act, be redressed by courts without previous action by the Commission, and, therefore, does not imply the power in a court to primarily hear complaints concerning wrongs of the character of the one here complained of. Although an established schedule of rates may have been altered by a carrier voluntarily or as the result of the enforcement of an order of the Commission to desist from violating the law, rendered in accordance with the provisions of the statute, it may not be doubted that the power of the Commission would nevertheless extend to hearing legal complaints of and awarding reparation to individuals for wrongs unlawfully suffered from the application of the unreasonable schedule during the period when such schedule was in force."

After citing two decisions in the lower Federal courts, and distinguishing several previous decisions of this court, and relying upon the *Hefley Case*, 158 U. S. 98, and the *Mugg Case*, 202 U. S. 242, as showing that the established rates were binding, the opinion proceeds (p. 445):

"In view of the binding effect of the established rates upon both the carrier and the shipper, as expounded in the two decisions of this court just referred to, the contention now made if adopted would necessitate the holding that a cause of action in favor of a shipper arose from the failure of the carrier to make an agreement, when, if the agreement had been made, both the carrier and the shipper would have been guilty of a criminal offense and the agreement would have been so absolutely void as to be impossible of enforcement. Nor is there force in the suggestion that a like dilemma arises from the recognition of power in the Commission to award reparation in favor of an individual because of a finding by that body that a rate in an established schedule was unreasonable. As we have shown, there is a wide distinction between the two cases. *When the Commission is called upon on the complaint of an individual to consider the reasonableness of an established*

rate, its power is invoked not merely to authorize a departure from such rate in favor of the complainant alone, but to exert the authority conferred upon it by the Act, if the complaint is found to be just, to compel the establishment of a new schedule of rates applicable to all. And like reasoning would be applicable to the granting of reparation to an individual after the establishment of a new schedule because of a wrong endured during the period when the unreasonable schedule was enforced by the carrier and before its change and the establishment of a new one. In other words, the difference between the two is that which on the one hand would arise from destroying the uniformity of rates which it was the object of the statute to secure and on the other from enforcing that equality which the statute commands.

"But it is insisted that, however cogent may be the views previously stated, they should not control, because of the following provision contained in section 22 of the Act to Regulate Commerce viz: '. . . Nothing in this Act contained shall in any way abridge or alter the remedies now existing at common-law or by statute, but the provisions of this Act are in addition to such remedies.' This clause, however, cannot in reason be construed as continuing in shippers a common-law right, the continued existence of which would be absolutely inconsistent with the provisions of the Act. In other words the Act cannot be held to destroy itself. The clause is concerned alone with rights recognized in or duties imposed by the Act and the manifest purpose of the provision in question was to make plain the intention that any specific remedy given by the Act should be regarded as cumulative, when other appropriate common-law or statutory remedies existed for the redress of the particular grievance or wrong dealt with in the Act.

"The proposition that if the statute be construed as depriving courts generally, at the instance of shippers, of the power to grant redress upon the basis that an estab-

lished rate was unreasonable without previous action by the commission great harm will result, is only an argument of inconvenience which assails the wisdom of the legislation or its efficiency and affords no justification for so interpreting the statute as to destroy it. Even, however, if in any case we were at liberty to depart from the obvious and necessary intent of a statute upon considerations of expediency, we are admonished that the suggestions of expediency here advanced are not shown on this record to be justified. As we have seen, although the Act to Regulate Commerce has been in force for many years, it appears that by judicial exposition and in practical execution it has been interpreted and applied in accordance with the construction which we give it. That the result of such long-continued, uniform construction has not been considered as harmful to the public interests is persuasively demonstrated by the fact that the amendments which have been made to the Act have not only not tended to repudiate such construction, but, on the contrary, have had the direct effect of strengthening and making, if possible, more imperative the provisions of the Act *requiring the establishment of rates and the adhesion by both carriers and shippers to the rates as established until set aside in pursuance to the provisions of the Act*. Thus, by section 1 of the act approved February 19, 1903, commonly known as the Elkins Act, which, although enacted since the shipments in question, is yet illustrative, the willful failure upon the part of any carrier to file and publish 'the tariffs or rates and charges,' as required by the Act to Regulate Commerce and the acts amendatory thereof, 'or strictly to observe such tariffs until changed according to law,' was made a misdemeanor, and it was also made a misdemeanor to offer, grant, give, solicit, accept, or receive any rebate from published rates of other concession or discrimination. And in the closing sentence of section 1 it was provided as follows:

"Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the Act to Regulate Commerce or acts amendatory thereof, or participates in any rates so filed or published, *that rate as against such carrier, its officers, or agents in any prosecution begun under this Act, shall be conclusively deemed to be the legal rate, and any departure from such rate or any offer to depart therefrom shall be deemed to be an offense under this section of this Act.*'

"And, by section 3, power was conferred upon the Interstate Commerce Commission to invoke the equitable powers of a Circuit Court of the United States to enforce an observance of the published tariffs.

"Concluding, as we do, that a shipper seeking *reparation predicated upon the unreasonableness of the established rate must*, under the Act to Regulate Commerce, primarily invoke redress through the Interstate Commerce Commission, which body alone is vested with power originally to entertain proceedings for the alteration of an established schedule because the rates fixed therein are unreasonable, it is unnecessary for us to consider whether the court below would have had jurisdiction to afford relief if the right asserted had not been repugnant to the provisions of the Act to Regulate Commerce. It follows from what we have said, that the court below erred in the construction which it gave to the Act to Regulate Commerce."

In short, what the *Abilene Cotton Oil Case* decides is, that with respect to interstate commerce the Act by its own language prescribed *how it should be determined what rates should be charged* by carriers, and how such rates should be made manifest; and that while § 1 of the Act prohibited any charge beyond just and reasonable rates, it imposed the duty of establishing and *publishing schedules, to the very end of enforcing that provision*, and in the effort to prevent unjust preferences and discriminations it rendered it *unlawful to depart from the established schedules*

until they were changed by the administrative Commission; wherefore the rate thus established and published must be deemed in law a reasonable rate for all purposes affecting the rights of the carrier and shipper between themselves *until it had been altered by the commission*, which might be done if they found it unreasonable in fact. The entire reasoning of the opinion is quite consistent and logical, as well as most cogent and convincing, if confined to that subject-matter.

But to so apply that reasoning as to make it support the contention that discriminations by the carrier in the *past*, amounting to a *departure by the carrier from the established schedule*, and effectuated by the giving of secret rebates to competitors in violation of § 2, or by other discriminatory practices violative of § 3, and where the conduct of the carrier has no *prima facie* sanction under the law by reason of the filing and publishing of a schedule, or otherwise, shall not be actionable in the ordinary course of law without a previous investigation or determination by the commission upon the subject, is not only to ignore the essential differences between the facts in this case and those in the *Abilene Case*, but is to *virtually eliminate § 9 of the Interstate Commerce Act*, which Congress in all its amendments has been scrupulously careful to leave untouched; and to make of the Interstate Commerce Commission, instead of an administrative and quasi-legislative body, with duties to perform respecting the laying down of rules for the future and seeing that the carriers continue to conform to their duties under the Act, a judicial body but without judicial powers, proceeding not by the ordinary process of law, but by written notices, sent here and there and everywhere to the persons concerned; not in actions *inter partes*, but in omnibus investigations conducted with associations of shippers and municipal corporations and other organizations, as parties of the one part, and groups of railroads, as parties of the other part; holding their sessions in Washington or wherever

it pleases them; without ample power to enforce the production of evidence; and without any power to enforce their findings.

Robinson v. Baltimore & Ohio R. Co. (1912), 222 U. S. 506, is in principle exactly like the *Abilene Case*, and was decided upon its authority. There, the schedule published and filed conformably to the Act made a differential between coal loaded into the car from wagons and coal loaded from a tippie. Robinson's shipments having come under the higher rate, he sued to recover from the company \$150 which was the excess paid by him over what would have been required if his coal had been loaded from a tippie. There was an agreed statement of facts, but in it was no suggestion that the schedule had been the subject of complaint before the Interstate Commerce Commission or had been found by that Commission to be unjustly discriminatory, or that any order had been made about it. Naturally and properly this court held that there was no right of action. The pith of the reasoning is lucidly expressed in the opinion of the court (by Mr. Justice Van Devanter) as follows (pp. 508, 509):

"The Act, c. 104, 24 Stat. 379; c. 382, 25 Stat. 855; c. 61, 28 Stat. 643; c. 708, 32 Stat. 847, whilst prohibiting unreasonable charges, unjust discriminations and undue preferences by carriers subject to its provisions, also prescribed the manner in which that prohibition should be enforced; that is to say, the Act laid upon every such carrier the duty of publishing and filing in a prescribed mode, schedules of the rates to be charged for the transportation of property over its road, declared that the rates named in schedules so established should be conclusively deemed to be the legal rates until changed as provided in the Act, forbade any deviation from them while they remained in effect, invested the Interstate Commerce Commission with authority to receive complaints against rates so established, and to inquire and find whether they were in any wise violative

of the provisions of the Act, and, if so, what, if any, injury had been done thereby to the person complaining or to others, and further authorized the Commission to direct the carrier to desist from any violation found to exist, and to make reparation for any injury found to have been done. Provision was also made for the enforcement of the order for reparation, by an action in the Circuit Court of the United States, if the carrier failed to comply with it.

"Thus, for the purpose of preventing unreasonable charges, unjust discriminations and undue preferences, a system of establishing, maintaining and altering rate schedules and of redressing injuries resulting from their enforcement was adopted whereby publicity would be given to the rates, their application would be obligatory and uniform while they remained in effect, and the matter of their conformity to prescribed standards would be committed primarily to a single tribunal clothed with authority to investigate complaints and to order the correction of any non-conformity to those standards by an appropriate change in schedules and by due reparation to injured persons.

"When the purpose of the Act and the means selected for the accomplishment of that purpose are understood, it is altogether plain that the Act contemplated that such an investigation and order by the designated tribunal, the Interstate Commerce Commission, should be a prerequisite to the right to seek reparation in the courts because of exactions under an established schedule alleged to be violative of the prescribed standards."

The *Abilene* and *Robinson Cases* maintain the binding force of published rates and differentials established pursuant to the Act, until modified by the Commission in the manner provided by the Act.

The present decisions give the same force to discriminatory practices established by the carrier without leave of the Commission, *not* included in the published rates

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and differentials, the practices being in direct violation of the Act.

Interstate Commerce Commission v. Illinois Central R. Co. (1909), 215 U. S. 452, was a suit brought by the Railroad Company in the United States Circuit Court to restrain the enforcement of an order of the Interstate Commerce Commission respecting car distribution. The issues were recited in the opinion of the court (by the present Chief Justice, then Mr. Justice White) as follows (p. 465):

"Being unwilling to comply with the order of the commission, the Illinois Central Railroad Company commenced the suit which is now before us to enjoin in all respects the enforcement of the order of the commission. It was averred that although the company was adequately equipped with coal cars and with sufficient motive power and operative forces, yet at times an inadequate supply of coal cars to meet the demand arose from the circumstances which we have previously stated. It was alleged that the regulations adopted by the company for ascertaining the capacity of the mines and for the distribution of cars were in all respects just and reasonable, and it was charged that the order of the commission, directing the taking into account of private cars in the distribution of cars, was unjust, unreasonable, oppressive and unlawful, because it deprived the owners of such cars of the right to the use of their own property. It was further alleged that, as to the foreign railway fuel cars, the order was also unjust, unreasonable, oppressive and unlawful, because such cars constituted no part of the equipment of the road, and, failing to count them, could not constitute an unlawful discrimination or the giving of an unjust preference within the intendment of the act to regulate commerce. Besides charging that the order to count the company fuel cars was unjust, unreasonable, etc., it was averred that the attempt of the commission to deal with such cars was

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beyond its power, and was but an effort to deprive the company of its lawful right to freely contract for the purchase of the fuel necessary for the operation of its road. In addition, the proceedings in the suit brought by the Majestic Coal Company were set out, the granting of a temporary injunction therein as to counting foreign railway fuel cars and private cars was alleged, and it was charged that in any event, as to those two classes of cars, the order of the Commission was not lawful since it compelled the company to violate the injunction which was yet in force. The Commission answered by asserting the validity in all respects of the order by it made, substantially upon the grounds which had been set out in its report and opinion announced when the order was made. All the averments in the complaint as to want of power were traversed and it was expressly charged that the subject of the distribution of coal cars as dealt with by the order was within the administrative power delegated to the commission by the terms of the Act to Regulate Commerce."

The Circuit Court enjoined the Commission from enforcing its order "in so far as it directed the taking into account the company fuel cars in the distribution of coal cars in times of car shortage, and in so far as it directed the future taking such cars into account." The Interstate Commerce Commission appealed to this court, and the decree was reversed on the ground that so far as it related to the company fuel cars the order of the Commission was within its administrative power.

Baltimore & Ohio R. R. v. Pitcairn Coal Co. (1910), 215 U. S. 481, arose on a petition of the Coal Company for a mandamus upon the Railroad Company to restrain discrimination in the distribution of cars in the "Fairmont region" of West Virginia, alleged to be in violation of § 3 of the Interstate Commerce Act. The petition was filed January 16, 1907, in the United States Circuit Court, under § 10 of the act of March 2, 1889 (25 Stat.

855, 862, ch. 382), sometimes called § 23 of the Interstate Commerce Act, because printed under that number in the pamphlet compilation of Interstate Commerce Laws. This section provided that for a violation of any of the provisions of the act of 1887 and amendments, preventing the relator from having interstate traffic moved at the same rates as are charged, or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar circumstances, to any other shipper, "a mandamus might be issued commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ." There were numerous grounds of complaint, some of which were abandoned at the hearing, and of the others the United States Circuit Court (154 Fed. Rep. 108, 120) overruled all except one, and with respect to that awarded a writ of mandamus. There were cross writs of error from the Circuit Court of Appeals, which court affirmed the judgment so far as questioned by the defendant's writ of error, and reversed it in part so far as questioned by the relator's writ of error (165 Fed. Rep. 113, 132). Upon review in this court it was pointed out in the opinion (by the present Chief Justice) at p. 492, that the question was, whether the court could grant the relief prayed consistently with the provisions of the Act to Regulate Commerce; and (p. 493): "*That a prohibition, by way of mandamus, against the act is sought and an order, by way of mandamus, was invoked, and was allowed which must operate, by judicial decree, upon all the numerous parties and various interests as a rule or regulation as to the matters complained of for the conduct of interstate commerce in the future.* When the situation is thus defined we see no escape from the conclusion that the grievances complained of were primarily within the *administrative competency* of the Interstate Commerce Commission, and not subject to be judically enforced, at least

until that body, clothed by the statute with authority on the subject, had been afforded by a complaint made to it the opportunity to exert its administrative functions."

And, after referring to the decision in the *Abilene Case*, which dealt with the provisions of the Act as they existed prior to the amendment of 1906, the opinion pointed out (p. 494) that the amendment adopted in 1906 to § 15 of the Act (34 Stat. 584, 589, c. 3591), had the effect of partially repealing (what was called § 23 of the Act of 1887, but was really) § 10 of the Act of March 2, 1889, 25 Stat. 855, 862, c. 382, already referred to, which permitted the courts to award mandamus in certain cases. The opinion discusses at length the effect of the 1906 amendment of § 15 upon the remedy by mandamus conferred by the previous Act, with the result of holding that *there was an implied repeal so far as the adjustment of the car-shortage regulations in the case under consideration was concerned.*

But it will be observed that *the aid of the courts was there invoked with respect to future regulations*, and it was denied because by the terms of the act of 1906 it was placed within the administrative functions of the Interstate Commerce Commission, and the mode in which their orders were to be carried into effect was by the same amendment prescribed.

I confess myself unable to find in the *Illinois Central* and *Pitcairn Cases*, or in the reasoning of the opinions therein, any ground for holding that the *general right of action* conferred by § 8 of the original Interstate Commerce Act for a violation of §§ 2 or 3, or the *option conferred upon the party injured*, by § 9 of the same Act, has been repealed as to *past transactions where the conduct of the carrier has not the sanction of an order of the commission*, or (what is in essence the same thing) *has not the sanction of a formal compliance with the Act, which the Act itself declares shall be prima facie lawful*, as was the case with

the published tariffs that were under consideration in the *Abilene* and *Robinson Cases*.

To declare, as was declared in the *Abilene Case*, that a carrier shall not be held actionable as for extortion in the past where it has merely charged the rates that were fixed in the schedule established in accordance with the Act, is to my mind as far as possible from declaring that past practices of the carrier that are not sanctioned by any finding or schedule, or otherwise protected from attack by the provisions of the Act, are exempt from court inquiry; or that the carrier is exempt from an ordinary action at law for violations of the Act, when §§ 8 and 9 in plain terms declare that the carrier shall for such violations be subject to an ordinary action at law, and declare also that the aggrieved shipper shall have the option whether he will make complaint to the Commission or bring his action in court.

In answer to the suggestion that the result reached in these cases virtually nullifies § 9 of the Act, it is said that the contrary is shown by the decision just announced in *Pennsylvania Railroad v. International Coal Co.*, No. 14, *ante*, p. 184. As I have endeavored to point out in the dissenting opinion in that case, the court there concedes the right of action, but in effect denies the right of recovery; for it excludes from consideration the only measure of damages that has ever been, or can be, generally applied in actions of that character.

The result of the decisions in these three cases, taken together, is, as it seems to me, to so greatly restrict and hamper the private right of action that Congress intended to confer by §§ 8 and 9 of the Act, that it is difficult to conceive of a case where the injured shipper can, by the simple and direct mode of an action at law, recover any substantial compensation for the discriminations practiced upon him by the carrier.